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(2) "hethersuch a dispute should be referred to arbitration only by the officers or servants of the ociety, and not by the staff union as representing officers or servants. 111-11(

90. 13388 / 21-8 -51.
Question (1) "hether under the authority executed by hri Anjarlekar, the amount ofloan due to the Sectt. Cooperative Bank can bedaducted from the gratuity payable by the Acctt-General towards payment of the loan;
(2) "hether it would be legal to direct the Accountant General to recover the amount from the gratuity payable to hri njarlekar and pay the same to the ank.
The ombay ooperative ocieties Act , 1925 .Section 24A(1) 117-120

91. 10591 / 29-5-51. — 12482 / 4-8-51.
Re: order issued under rule 48 of the ombay ooperative Societies ules, 1927 , for removing the members of the anaging Committee of the Society uestion regarding the validity of the order. 121-124.

92. 12432-Confl. / 22/8/51/
uestion (1) hetherunderthe Indian rusts Act the first mortagage of the house could not be considered a trustee security, and
(2) Whether the profits of the Cooperative housing inance Society would be liable to income tax and whether the divadend declared by the ociety would be added to the income of therecipiant and again subjected to income tax. 125-126.

93. 18312 / 1-9-51. — 14422 / 11-9-51.
Question whether clerical mistakes or errors in awards made by the Registrar's nominees under Sec. 54. of the Bombay Coop. Societies Act.

		1925, can be corrected by him.	127-128-
	16131 11-10-51.	Question (1) whether the order passed by the liquidator without having the sanction of the Registrar as required by Sec. 50of the Bombay Cooperative Societies Act, 1925, and without giving theminor representative of the deceased member an appertunity to answer the claim as re-quired by the proviso of that section is legal.	135-140
95.	14452 11-9-51.	Question whether the decision of the Registrar of Cooperative Societies is correct that is to say whether a case once referred to arbitration could not be withdrawa and whether,the Registrar has no power to order a change or his nominee, the Bombay Cooperative Societies Act, 1925, Section 54 and Rule 32 of the Bombay Cooperative Societies Rules 1927.	135-140.
96.	18078 14-11-51.	Question whether under the Bombay Cooperative Societies Act, 1925, it is feasible for a societies registered under the Act to convert itself into a different type of Society by the adoption of by-laws of the latter type of society, or whther in order to achieve this object it would be necessary to amend the Act.	141-144.
97.	18440 19-11-51.	Re: Registration of a cooperative Insurance Society Ltd. Which is meant for Parsis only. Question whether the Registrar can refuse to register the Society under the Bombay Cooperative Societies Act on the ground that non-Parsis are not admitted to the membership of the Society.	145-148
98. 24841 30/11/51.	19466 4-12-51.	Re: Power to arbitrator contemplated by rule 20 in order 5 in the first Schedule to the Civ. Pro. Code if it is not possible for him for give reason for the other to issue summonses in arbitration proce dings,in the manner provided by Rule 44 of the Cooperative Societies Rules 1927, Amendment of the Rules .	149-152
99	16692 20-10-51	Question whether joint stock Companies and associations can be admitted as members of Cooperative Societies.	155-156
100.	17259 1-11-51..	Re: ------do-------- Point regarding exemption under Section 67 of the Bombay Coop.	
101.	1076-Comfl. 27-12-51.	Societies Act, 1925. Re: Removal of Managing Committee	157-158

of a Cooperative Society by Govt.
under rule 48 of the Bombay Cooperative
Societies Rules, 1927.

15-162.

V.v.k. 15/6/56/

50.

/K

Office of the R.L.A.

Amalgamation of societies having limitied and unlimited liabilities.

Bombay Co-operative Societies Act 1925, --Section 15-.

There will be no legal objection to the amalgamation of a-limited and unlimites society after going through the procedure prescribed by section 15 of the Bombay Co-operative Societies Act, 1925. The difficulty experienced by the Registrar would soon cease to be of proctical importance as provision is being made in the amending measures for changing the nature of liability from limited to unlimited or vice versa.

Id/- P.M.L.
dt/- 13/1/

Remembrancer of Legal Affairs.

U.R.to R.D. No. 455 , dated the 14th January 1948.

V.v.k. 10/6/56/

50.

Bombay Co-operative Societies Act, 1925.

Office of the R.L.A.

In this case, the Assistant Registrar, Co-operative Societies, Ahmedabad, in exercise of powers of the Registrar under section 56 of the Bombay Co-operative Societies Act, decided the appeal against the award made by the Registrar's nominee. The aggrieved party preferred a revision application to the Registrar under section 54A, and the Registrar set aside the/ Assistant Registrar's / order of the . There is now a revisio application pending before overnment against the order of the Registrar. The Deputy Secretary, R.D. observes :-

> "I do not see the properiety of the words "shall be final and conclusive" in section 57 if scope for revision is still to be left. It appears to me that the Registrar is not competent to interfere under secti n 64A I wonder if Government also can pass any order now. It will be going one step further when already the proceedi ngs ought to have stopped with the order of the Assistant Registrar under section 57. Perhaps, Government can act in revision because the Registrar's order under section 64A was itself, illegal. If this can be done then the Rebistrar's order can be reversed as ultra vires in view of section 57 and the Assistant Registrar's order automatically restored. The R.L.A. is requast d to advise whether the view of the Deputy secretary is correct.

2. Under section 57 of the Bombay Co-operative xxxxxxxxxxxx societies Act, an order passed in appeal under section 56 shall be final and conclusive and under section 59(1) the order passed under section 56 shall, on a certificate signed by Registrar or Liquidator, be deemed to be a decree of the civil court and shall be executed in the same manner as a decree of such court. The words "final and conclusive" in section 57 do not oust the revisional jurisdiction (cf. Naik Vnadurang Vs. Sershdasacharya, 46 Bom. L.R.

page 7(11) . Revisional jurisdiction vests in the Provincial Government and the Registrar under section 64A. No doubt the order was passed by the Assistant Registrar exercising the powers of the Registrar under sections 56, but as Assistant Registrar , he was subrdinate to the Ragistrar to revise the order of the Assistant Registrar under section 64A. It follows, therefore , that the order passed by the Registrar in revision under section 64A cannot be considered ultra vires and viid. Government has, of course, power to revise the order of the Rigistar under section 64A. It is for Government to decide whether the order passed by the Rigistrar in the present case is improper and should be set aside.

Id/- P.M.L.
dt/- 13/1/

Remembrancer of legal Afrairs.

. to R.D. No. 448 dated the

14th January 1948.

V.v.k. 11/6/56/

SC.

Office of the R.L.A.

Deduction from by of Government servant to satisfy debt due to the Society Bombay Co-operative Societies Act, 1925. Sec. 24-A.

The legal position as stated in section 24-A of the Bombay Co-operative Societies Act, 1925, is clear. On a requisition made by a society in pursuance of an agreement executed by its debtor member, it would be competent for Government to make deductions from the pay of such debtor.employee and to pay the amount so deducted to the society. Whether such deductions should be made in the pay bill itself or from the salary while making payment, should depend on the administrative concenience and it is for Government to decide, but either of the two modes of revovery would be equally lawful.

Id/- P.M.L.
dt/- 12/3/

Rememorancer of Legal Affairs.

U.R. to R.D. No : 2482 , dated the 12th March 1948.

V.v.k. 11/6/86/

5C.

Office of the R.L.A.

There would be no legal objection to returning the deposits to the ex-employees on furnishing an idnemnity bond.

Id/- P.M.L.
dt/- 12/4/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3534 dated the 12th April 1948.

V.v.k. 11/5/56/

SC.

Office of the R.L.A.

Service of Notice.

Bombay Co-operativd Societies Act, 1925.

The question raised for the consideration of the R.L.A. is whether a notice issued under sub-rule (3) of Rule 50 of the Bombay Co-opertive Societies Rules, 1927 , requires personal service.

Section 59(1) of the Bombay Co-opertive Societies Act, 1925 does not provide that a notice should be given to the defauoter. However, clause (LL) of section 71 read with section 59A(1) provides for making rules prescribing the manner in which any property shall be delivered to and the terms and conditions subject to which such property shall be held by a society under section 59A. Sub-rule (3) of rule 50 of the Bombay Co-opertative Societies Rules, 1927 prescribes that on receipt of an application under sub-rule (2), notices shall be issued to the defaulter and to all persons known to be interested in the property including those whose names appear in Record of Rights as persons holding any interest in the property about the intended purchaser. This rule does not provide for any mode of service of the notice issued thereunder. 'Service' does not necessarily mean personal service. What appears necessary is that the notice must reach the right person. Prima facie, personal service is the best mode of service but if by any other mode of service, it could not be proved that the notice has reached the ritht person or an inference of the knowledge of such notice could be legitimately drawn, then there would be no objection to holding that the person has been served with the

notice . Substituted service can no doubt be resorted to in cases where personal service is impossible or impracticable .. But such substituted service can be challenged if it could be proved that the person had no knowledge of the novice. In the present case, the rights of the defaulter to the property and of other persons interested in such property are involved. If would not therefore be safe to rely on substituted service. Consequently, it appears desirable to insist on personal service of notice under sub-rule (3) of rule 50 particularly when that provision does not prescribe any mode of service . If substituted service is considered desirable from the administrative point of view, steps may be taken to amend rule 50 for the purpose.

Id/- P.M.L.
dt/- 26/1/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 916 , dated the
27th January 1948.

V.v.k. 11/6/56/

5C.

Office of the R.L.A.

Bombay Land Revenue Code, 1879. Secs, 174 and & 175. Bom. Co-opsative Societies Act, 1925 . Section 70 .

Condoning delay in payment of purchase money.

Notice to a Co-oprative Society.

The first question raised for the consideration of the RL.A. is whether the provision of sections 174 and 175 of the Bombay Land Revenue Code, 1879 , are mandatory. The words "shall be paid " in section 174. and the words "shall be resold" and "shall forfeit" in section 175 of the Bombay Land Revenue Code clearly indicate that these provisions are mandatory. There is no provision in the Bombay Land Revenue Code providing for condoning the delay in paying the purchase money. Consequently, the provisions of sections 174 and 175 will have to be construed as mandatory.

2- The second question for consideration is whether a notice under section 70 of the Bombay Co-operative Societies Act, 1925 , was necessary in the present case. Section 70 provides that no suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar etc. Although in the present case the Validity of the auction sale of the defaulters' property was disputed, the suit can well be said to be in respect of an act touching the business of the society. The suit arose out of and was in respect of an award obtained by the Society which is undoubtedly an act touching the business of the society .As Chagla J (as he then was) said in the case of G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikaji Manwanji Karanjia I.L.R. 1943, Bombay p. 320 at p. 327 " the word business is a

very wide term and certainly it is not synonymous with the objects of a society. The expression "touching the business of society" would mean affecting the business of a society or relating to the business of a society .... whatever is done in the ordinary course of business certainly relates to or affects the business."

I am, therefore, inclined to think that notice was necessary, and that the view taken by the learned judge is wrong.

3. However, the limitation for the appeal has expired and the delay will not be condoned as the grounds suggested by the Registrar do not amount to sufficient cause within the meaning of section 5 of the Indian Limitation Act.

Id/- P.M.I.
dt/- 27/5/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 507 dat

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SC.

Office of the R.L.A.

Section 26A of the Bombay Co-oprative Societies Act provides for the execution by a member of the Society of an agreement to the effect that the employer shall be competent to deduct from the salary or wages payable to him by the employer such amount as may be specified in the agreement and to pay the amount so deducted to the Society in satisfaction of the debt owing by he member to the Society. Under sub-section (2) on the execution of such agreement the employer shall if so required by the Society make deductions in accordance with the agreement and pay the amount so deducted to the Society. It is true that the section makes it incumbent upon the employer upon a requisition in writing of the Society to make the deductions but there is nothing in it to justify the construction that in making such deductions the employer shall give priority to the Society's claim over the claims of decree holders who have obtained orders of attachment of the judgment-debtor's salary from competent courts . Consequently the contention of the Hon. Secretary of the Bombay Secretariat Co-pprative Bank is not correct.

Id/- P.M.L.
dt/- 12/7/

Remembrancer of Legal Affairs.

U.R. to S.S.D. No. 379 -Confl, dated the 13th July 1948.

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Office of the R.L.A.

Question whether section 54A of the Bombay Cp-opre-tive Societies Act, 1925 has retrosv pective effect

Seen and returned.

2. There appears no objection to informing the Solicitors as proposed . It seems that the new remedy of an appeal to the Tribunal would not be available. Howeve , it would be for the Tribunal to decide whether section 54-A (4) of the Bombay Co-oprative Societies Act is retrospective and whether an application would competent.

Id/- P.M.L.
dt/- 9/7/

Remembrancer of Legal Affair

U.R. to R.D. No. 8476 , dated the 10th July 1948-

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5C.

Office of the RL.A.

Bombay Co-oprative Societies Act, 1925. Section 33(2(a)

Whether a Coppr-ative Society in Sind can claim exemption from stamp duty.

Under R.D. Notification No. 10055/26, dated 22nd March 1939 instruments executed by or on behalf of any society registered under the Bombay Cooperative Societies Act, 1925 are exempted from payment of stamp duty. The societies registered under that Act are amenable to the control of the Registrar and Government of Bombay. After Sind separated, the Bombay Co-oprative Societies Act continue to be operative in Sind. By such contaauance the provisions of the Act became operative as an Act of Sind and not as an Act of Bombay. After the partiation of India this position became clear (see section 18(3) of the Indian Independance Act). Now the Act as operative in Sind would be termed the Sind Co-oprative ~~xxxxxxxxxxxxxxx~~ Societies Act. Consequently a coppr-ative society in Sind thought previously registered under the Bombay Cooperative Societies Act, 1925 , would now be deemed to be registered under the Sind Cooperative Societies Act and the instruments executed by or on behalf of such society would not be entitled to the benefit of R.D. Notification No. 10055/26 , dated 22nd March 1939.

Id/- P.M.L.
dt/- 15/7/

Remembrnacer of Legal Affairs.

U.R. to R.D. No. 6706 , dated the 17th July 1948.

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Office of the R.L.A.

The Bombay Cooperative Societies (Amendment)Act, 1948 , was published on 1st April 1948 and came into force on thatdate. It repealed and re-enacted the provisions of bombay Act XXIX of 1942 and Bombay XVII of 1943 which were passed under section 93 regime. In order to continue in opetation the provisions of those two Acts, it was necessary to publish and bring the Amendming Act of 1948 in force before 3rd April 1948. Section 37 of the Amedning Act which inserts section 63A in the original Act empowers Government to constitute the Cooperative Tribunal . Section 30 of the Amending Act of 1948 provided that any party aggrieved by any decision of the Registrarts nominee made under section 54 , section 54A(3) , or section 55 may appeal to the Registrar- So also section 64 of the original Act provided that an appeal against an order of the Registrar himself made under section 54 or 54A(3) atom can b made to the provincial Government.The Amending Act of 1948 provides that the above appeals shall lie to the Cooperative Tribunal and not to the Registrar or the Provincial Government. The Provincial Government has not yet been able to constitute the Copperative Tribunal. The Registrar reports that he has received appeals under the provisions referred to above. He suggests that the operation of the provisions constituting the Cooprative Tribunal and giving jurisdiceion to the Tribunal should be suspended.

* before it was amended by the amending Act.

2. The Amending Act of 1948 has already come into force and the operation of the said Act or any of the provisions thereunder cannot be suspended.There is no provision in the Amending Act warranting such a course. As reards the appeals validly filed before the Registrar

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before 1st April 1948 ,, there should not be any difficulty. The repeal of the old section 56 will not affect the jurisdiction vesting in the Registrar in view of the provisions of section 7 of the Bombay General Clauses Act, 1904 . The Registrar should proceed to dispose of the said appeals, inspite of the fact that the old section 56 is no longer in force.

3. The real difficulty will arise in regard to appeals which under the Amending Act of 1948 have to be filed before the Tribunall. The Tribunal is not in existence and their institution before the Registrar is not valid. Moreover section 56 prescribes a period of limitation of one month for the institution of appeals before the Tribunal. Until the Tribunal is constituted, it is impossible for the parties to comply with the provisons of the new section 56. In such cases it has been held that the law would excuse the parties and would permit them to file appeals befor the Tribunal after the expiry of the period of limitation prescribed by new section 56 (see I.L.R. 38 Bom. 653 and 656). But all the same inorder that parties should not suffer in consequence of the delay which has occurred in the constitutionof the Tribunal , it will be necessary to have an amending legislation . The Registrar's proposal to suspend the operation of the new section 56 and to revive the old section is not legally feasible. Before the amedding legislation is undertaken, the Registrar should be asked to report fully all cases in which difficulties have arisen in consequence of the delay in the constitution of the Tribunal.

Id/-
dt/- 13/8/

Additional Secretary to Government.

U.R. to R.D. No. 7656, dated the 13th August 1948. V.v.

Office of the R.L.A.

In the arbitration suit No. ABN/Ac/50 of 1946 an award under section 54 of the bombay Co-oprative Societies Act, 1925 was passed by the Registrar's nominee on 21-5-1947 against Mr. B.M.Shah who was defendant No. 2 in the original dispute. mr.Shah then preferred an appeal to the Assistant Registrar, C.S. Ahmedabad on 21-6-1947 under section 56 but the appeal was rejected on 29- 10-1947. On 28-11-1947 he filed a revision application under section 64-A before the Registrar who rejected the same on 18-5-194 Revenue Department states that in this c ase no appeal lies to the Co-operative Tribunal as orders under section 56 were already passed befor the amending Act came into force and that Government is quite competent to call for and examine the proceedings underlying the Registrar's orders dated 18-5-1948 and modify, annul, reverse or pass such orders thereon as it may deem fit. Assistant Secretary, Revenue Department is of the view that since the amending Act of 1948 has already come into force he is not sure whether Government can exercise its powers under secti n 64-A .Deputy Secretary agrees with the Revenue Department matter . office but the R.L.A. is requested to advise in t he

2. Section 64-A of the Bombay Co-operativ e Societies Act, 1925 provides that the Provincial Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them except those referred to in sub-section (6) of section 63-A for the purpose of satisfying themselves as to the legality or propriety of any decisions or order passed and as to the regularity of the proceedings of such officer. The Words "except those referred to in sub-section (6) of section 63-A" were inserted in this section by section 39 of the Bombay Co-oprative Societies (Amendment) Act, 1948.

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As a result of this amendment the powers of Government to call for and examine the records of inquiry or proceedings were taken away when the same powers are exercised by the Tribunal under section 63-A which was added by the Amendment Act. But sub-section (6) of section 63-A provides that the Tribunal may call for and examine the record of anyn proceedings in which an appeal lies to it etc. That means that when no appeal lies to the Tribunal the revisional powers under sub-section '6' of section 63-A cannot be exercised by the Tribunal. An the present case appeal under section 56 was filed before the Assistant Registrar and rejected long before the Amending Act came into force. No fresh appeal under section 56 will lie to the Tribunal. The powers under sub-section (6) of section 63-A cannot therefore be exercised by the Tribunal in this case. Since the powers under sub-section (6) of section 63-A cannot be exercised by the Tribunal the Provincial Government is competent to exercise the powers for revision under section 64-A. Moreover the amendment of section 64-A by Bom. Act XXVIII of 1948 will not affect the remedy open to the parties to apply in revision to Government under section 64-A in view of the provisions of section 7 of the Bombay General Clauses Act, 1904 (cf. R.L.A.'s opinion No. 7686 dated 23-8 1948). The view taken by Revenue Department in its office note, dated 23.8.1948. at pp. 69-70 ante, is correct.

Id/- P.M.L.
dt/- 22/9/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9053 , dated the 23rd September 1948.

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Office of the R.L.A.

Question whether Co-operative Societies can invest its funds in shares of the Industrial Financial Corporation of India.

Bombay Co-operative Societies Act, 1925. Section 37(b)
Trusts Act, 1882 section 20(c)

Revenue Department states that the Central Government has guaranteed the repayment of a minumum dividend of 2½% per annum on the shares of the Industrial Finance Corporation of India and therefore it is open to co-operative societies under section 37(b) of the Bombay Co-operative Societies Act, 1925, read with section 20(c) of the Indian Trusts Act, 1882, to invest its funds in shares of the Industrial Finance Corporation of India and permission of Government is not necessary. The R.L.A. is requested to confirm this view.

2. Under section 37(b) of the Bombay Co-operative Societies Act, 1925, a society may invest or deposit its funds in any of the securities specified in section 20 of the Indian Trusts Act, 1882. Under clause (c) of section 20 of the Indian Trusts Act, 1882, a trustee is bound to invest trust money in stock or debentrure of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Central Government, etc. The word 'company' has not been defined in the Act. However, it would ordinarily have to be given the meaning assigned to it in the enactment governing companies, viz. the Indian Companies Act, 1913. That the word "companies" used in clause (c) of section 20 does not carry the wider connotation of any association of a number of individuals for the purpose of carrying on trade or other legitimate business would further appear from the inclusion in terms of the Provincial Co-operative Bank Ltd. The Industrial finance

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Corporation is to be seemed to be a bank and, therefore, a company only for the purposes of the Bankers' Book Evidence Act. Although, therefore, in practice there would be no justification for making a distinction between the shares of a statutory corporation the dividend upon which has been guaranteed by Government and the shares of a company to which a similar guarntee has been given, nevertheless, as the wording now stands, a corporation of this kind, which is not a company, would not strictly fall within the scope of the section. Perhaps when the Indian Trusts Act was passed, copporations of this kind were not envisaged and the Act was, therefore content with ccompanies and municipal bodies and other local authorities mentioned in clause (d) of the section. It would be desirable to get the Act amendment by adding the ~~xxx~~ words ", or copporations " after the word" companies " occurring in clause (c).

Id/- P.M.L.
dt/- 30/9/48/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9281 , dated the 1st October 1948.

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Office of the R.L.A.

The Registrar of Co-operative Societies appears to have registered certain "Better Farming Societies" without compliance with the provisions of Chapter XI. He has requested Government to allow him to exempt such societies from the provisions of Chapter XI and, if that is not possible, to amend the Bombay Co-operative Societies Act to facilitate the registration of such societies without compliance with the provisions of Chapter XI.

It is not possible to exempt "Better Farming Societies" from the provisions of Chapter XI of the Bombay Co-operative Societies Act. The action taken by the Registrar in registering these societies without compliance with the provisions of Chapter XI is ultra vires. If Government disires to amend the purpose, steps may be taken in that direction. (Cf. R.L.A.'s opinion No. 10250, dated the 30the October 1948).

Id/- P.M.L.
dt/- 30/10/,

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10251 , dated the 30th October 1948

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Office of the R.L.A.

The Bombay Coperative Societies Act, 1925

Section 67

Exemption of 'better farming iety" under.

"Better Farming Society" as defined in s. 64C(b) in Chapter XI of the Bombay Cooperative Societies Act, 1925 does not cease to be suhh society merely because there is no a compulsory joining them or subscribing to them, for the provision for such compulsion is ane enabling p vision. The provisions of Chapter XI shall apply to all "Better Farming Societies" irrespective of the fact whe or not the minority is compulsorilly required to join s society. It is true that sectio 67 empowers Government to order exemption of any society from the provisions o the Act, but no exemption from the provisi ns of Chapt XI can be granted under section 67 to "Better Farming Society" when the provisions of that Chapter are specifically made applicable to it. The view taken by R.D. is correct-

Id/- P.M.L.
dt/- 16/9/48/

Remembrancer of Legal Affairs

U.R. to R.D.No- 3607 , dated the 10th September

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Office of the R.L.A.

The Bombay Co-operative Societies Act, 1925. Section 67 Exemption from the provisions of Chapter XI under ...---

In his last opinion No. 8607 dated 10th September 1948 the R.L.A. opined that "no exemption from the provisions of Chapter XI of the Bombay Co-operative Societies Act, 1925, can be granted under section 67 to 'Better Farming Society' when the provisions of that Chapter are specifically made applicable to it" . That opinion still holds good. Section 67 provides that the Provincial Government may by general or special order to be published in the Official Gazette exempt any society or class of societies from any of the provisions of the Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order. This provision itself makes a distinction between granting an exemption from the provisions of this Act and directing the application thereof with certain modifications as may be specified in the order. It would, therefore, follow that if Government considers that certain provisions in Chapter XI cannot be properly complied with or it would be administratively necessary to relax those provisions in respect of certain Better Farming Societies, there would be no objection to Government issuing a direction to the effect that the provisions of Chapter XI will apply to such society with certain modifications subject of course to the General principles contained in R.L.A.'s opinion No. 6109 dated 11-6-47 .It is true that section 67 empowers Government to order exemption of any society from the provisions of the Act, but no exemption from the provisions of Chapter XI can be granted under section 67 to "Better Farming Society" when the provisions For instance, compliance with clauses (e) and (f) of section 64G may in certain cases be administratively found

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difficult, In such a case a direction can be issued by Government under section 67 directing the relaxation of the application of clauses (e) and (f) of section 64-C.

Id/- P.M.L.,
dt/- 30/ 10/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10250 ,, dated the 30th October 1948.

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It appears that the opinion of the Indpector General of Registration is challenged by the Salsette Catholic Co-operative Society and that opinion is not among the papers. The Revenue Department should in the first instance call for a report of the Inspector General of Registration and then if necessary refer the case to the Remembrancer of Legal Affairs for his opinion.

Id/- P.M.L.
dt/- 23/12/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12254 (), dated the 23rd December 1948.

V.v.k. 11/6/56/
SC.

Office of the RL.A.

The Bombay Co-operative Societies Act, 1925. Section 70 Notice of suit.

R.L.A.'s opinion No. 5071 dated 28-5-1948.

The R.L.A. was informed by the lawyer (Mr. B.N. Gokhale) who argued the appeal before the high Court that the point regarding notice cannot be said to have been decided. Since no judgment has been recorded, it cannot be said that the High Court has takin a view different from that expressed by the R.L.A. in his opinion No. 5071 dated the 28th May 1948 Mr. Gokhale also agrees that on a suitable occasion the point should be re-agitated before the High Court and got decided with finality. The Bank of course will have no present remedy but, in these circumstances, it would not seem necessary to amend the Act. immediately.

Id/- P.M.L.
dt/- 7/12/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11663

dated the 8th December 1948.

V.v.k. 11/6/56/

5C.

Legal Department.

Whether Stamps duty and registration fees are payable on transfer of leases executed by one member in favour of another member of housing society.

By Revenue Department Notifications Nos. 3648/45 dated 26-7-1948 and 3648/45 (a) dated 26-7-1948 issued under Section 33(2) of the Bombay Co-operative Societies Act, 1925 the stamp duty and registration fee in respect of transfer of leases executed by one member in favour of another member of housing Societies formed of persons belonging to classes other than agriculturists or backward communities are not remitted. Moreover the assignment of such lease-hold right is not part of the business of the Society (See R.L.A.'s No. O. Stamps 7 dated 8/12/28). Consequently the view expressed by the Inspector General of Registration and the Joint (Registrar & Co-operative Societies is cofrect .

Id/- P.M.L.
dt/- 23/6/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7001 , dated 24th June 1949.

V.v.k. 11/6/56/

5C.

Office of the R.L.A.

The Bombay Co-operative Societies Act, 1925. Section 71(na) Rule 26A of the Bombay Co-pperative Secieties Rules, 1927.

Clause (na) was inserted in section 71 of the Bombay Co-operative Societies Act, 1925 , by Bombay Act No.XVIII of 1948 , and this provision came into force on 1st April 1948. In exercise of the power thereunder , Government issued a notification No. 8003 -45, dated 14-8-1948 insertagg a new rule 26A in the Bombay Co-operative Societies Rules 1927, prescribing the rate of contrabution to the educational fund of the Provincial Co-operative Institute .The question raised for R.L.A.'s consideration is whether the Cp-operative societies can be asked to contribute towards the educational fund of the institute from the profits earned by the societies for the co-operative year 1947-1948.

2. The contribution payable by a Co-operative society underrule 26A represents a percentage of the net profits of the year for which dividend at a certain rate is declared- Obviously, therefore, the contribution payable by a co-operative society under that rule would be out of the net profits of the year in which those ppofits have been earned Since clause (na) of section 71 of the Bombay Co-operative Societies Act, 1925, and rule 26A of the Bombay Co-pperative Societies Rules made thereunder, came into operation after ist of April 1948 , the contrabution payable by a Co-operative Society to the educational fund of the Institute would be out of the net profits earned during the year 1948-49, Consequently no contribution can be payable out of the net profits of the year 1947-48.

Id/- P.M.L.
dt/- 3/2/

membrancer of Legal Affairs.

U.R. to R.D. No. 1261 , dated the 4th February 1949.

GV.v.

Office of the R.L.A.

The words "in the course of..... an enquiry under section 43" read with the subsequent words "on the application of the officer conducting the audit or holding the inquiry" in section 50A (1) of the Bombay Co-operative Societies Act, 1925 as amended in 1948 imply that the application should be made to the Registrar during the progress of the inquiry, that is, at any time after the commencement and before the termination of the inquiry, by the officer holding the inquiry. After once the inquiry is complete and the report submitted to the Registrar , as in the present case, the officer holding the inquiry would become functus officio and would not be entitled to apply to the Registrar. Consequently, an application under section 50A (1) by Mr. Deodhar (E.O.) at this stage in the present case would not legally be in order .

Sd/- P.M.L.
dt/- 8/3/

Remembrancer of Legal Affairs.

R.R. to R.D. No. 158 "Confl.", dated the 9th March 1949.

V.v.k. 11/6/58/

5C.

Office of the R.L.A.

Contribution payable by Cooperative Societies. The Bombay Cooperative Societies Act, 1925 Section 71(na) .

The Bombay Cooperative Societies Rules 1927 Rule 26A.-

The substantive provision section 71(na) of the Bombay Cooperative Societies Act, 1925, became effective only when rule 26A of the Bombay Cooperative Societies Rules was made and brought into force on 14th August 1948; and that rule being only prospective , the contribution payable towards the educational fund of the Bombay Provincial Cooperative Institute would be out of the net profits earned during theyear 1948-49,The fact that the cooperative year ends on 30th June would obviously make no difference in the legal position.

Id/- P.M.L.
dt/- 27/5/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5949 , dated the 28th May 1949.

V.v.k. 11/6/56/

5C.

Office of the R.L.A.

Taking of indemnity bond from Co-operative Societies for whom Government has given a guarantee for Banker's margin.

It has been held in Muthuram V. Vellaya (39 Mad. 985) that where a surety enters into a contract of guarante. without the concurrence of the principal debtor, even though he pays the principal debt, his rights will be limited to those under sections 140 and 141 of the Indian Contract Act and that the implied promise of indemnity mentioned in section 145 cannot be invoked by him. It was also pointed out that in such circumstances ~~the plaintiff~~ the plaintiff cannot call back upon sections 69 and 70 of the Indian Contract Act. From the G.R. at pages 53-54 ante it appears that Government has given guarantee without the knowledge or request of the Societies concerned. Consequently it appears necessary to take indemnity bonds from these Societies.

Id/- P.M.L.
dt/- 8/6/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6446 , dated the 11th June 1949.

V.v.k. 11/6/56/ 50/-

Office of the R.L.A.

Bombay Co-operative Societies Act, 1925 Sec./ 16(2)

The use of the word "may" in section 16(2) of the Bombay Co-operative Societies Act, 1925 clearly indicates that it would be within the discretion of the Registrar to refuse to register the amendment of the by-laws even though he is satisfied that such amendment is not contrary to the Act or the rules, for he may consider the amendment to be contrary to the policy of the Department or obstructive to the smooth working of the Society.

Id/- P.M.L.
dt/- 9/5/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5172 , dated the 11th May 1949.

V.v.k. 11/6/49/

50.

Office of the R.L.A.

The practive as in the Bombay Revenue Tribunal appeals may be followed in cases bbfore the Co-operative Tribunal, subject to this proviso that the Remembrancer of Legal Affairs should not be called upon to give an opinion as is done by the Revenue Tribunal.

Id/- P.M.L.
dt/- 22/8/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9475 , dated the 23rd August 1949.

V.v.k. 11/8/56/
5C.

Legal Affairs Department.

The question in this case is whether the action proposed by Government to remove certain members of the Managing Committee of the Saraswat Co-operative Society would be legal or is likely to be successfully challenged in a court of law. Under rule 48 of the Bombay Co-operative Societies Rules, Government may, notwithstanding anything contained in the bye-laws of the Society, remove any of the members of the Committee of a co-operative society. Before such action is taken, Government has to consult the Bank financing the Society and give an opportunity to the members to show cause why such order should not be made. The discretion under the rule is absolute to make an order and cannot be questioned in a court of law. In this particular case, the report of the Joint Registrar of Co-operative Societies dated the 20th December 1948 clearly shows that the members of the Managing Committee have been acting in a high handed and unconstitutional manner and their continuance in office will not be in the interest of the Society. There is, therefore, no objection to send the Society the proposed notice requiring them to (send the Society the proposed notice requiring them to answer the charges against them. After their explanation is received, Government may decide what orders they should made. It is true that the Secretary of the Society has given notice complaining against the Joint Registrar and the Revenue Department and threatening legal proceedings. But that threat should not deter Government from taking action under rule 48, if such action is necessary in the interest of the Society In this particular case, long beforethe notice was received, Government had decided to take action under the rule. It cannot, therefore, be urged that Government present notice is intended to forestall the

Society's proceedings. In any case, if as stated above, action under rule 48 is necessary, the Society's notice ought not to deter Government from taking such action.

Id/-
dt/- 22/6/

Additional Secretary to Government.

Submitted after issue with an index card.

File in O.Co-operative Societies /49.

Id/-
dt/- 27/7/

Id/- G.R.D.
dt/- 27/7/

Id/-
Dt/- 16/8/

Id/-
Dt/- 2/9/

No. 128 Dt. ~~22/6/x~~ 23/6/49/

Issued Id/-
Dt/- 25/6/

y.v.k. 12/6/56/ 5C.

Office of the R.L.A.

The Bombay Co-operative Societied Act, 1925.

Sec. 33A and 71(2)(ee)

Section 33A of the Bombay Co-operative Societies Act, 1925, provides that with such safeguards as may be prescribed by rules in this behalf, the Provincial Government may--

(i) give loans to Societies, or

(ii) guarantee the payment of the principal of debentures issued by them or of interest (debentures issued by them or of interest) thereon or both.

The words "the principal of debentures issued by them or of interest thereon or both " were substituted for the original words "interest on debentures issued by them " by Section 2 of Bombay Act XXII of 1935. Under caluse (ee) of Sub-section (2) of Section 71, Government may make rules prescribing the period and terms under which Government aid may be given to Societies and the terms under which the Provincial Government may guarantee the payment of the principal of and interest on debentures issued by registered Societies. This clause was also amended in 1935. It will thus be clear that beforethe amendment of section 33A and Sectionm 71(2)(ee) in 1935, Government had the power either to give loans to Societies or to guarantee the payment of interest only on the debentures issued by the Societies. 33A and 71(2)(ee) in 1935, it is now competent for G Government to guarantee the payment of the principal of debentures or of interest thereon or of both principal and interest, subject to the terms prescribed by means of rules made under Section 71(2)(ee) . In view of this legal position, it does not appear necessary to introduce a new Bill as suggested by F.D. Section 81

of the Government of India Act 1935 , ~~xxxxxxxx~~ has no application to the present case.

Id/- P.M.L.
dt/- 2/8/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8712 , dated 3rd August 1949

V.v.k. 12/ 6/56/

50.

R.I.No. 16193 , dated 5/6/-10-49.

Sd/- P.S.Nadkarni
dt/- 7/10/

A.L.R. -It appears from Govt's letter at p. 93 ante that Govt . proposed to create a second floating charge on the cloth purchased by the wholesalers to the extent of the Guarantee given by Govt. to the Central Financing Agency . If so , Govt. may take hypothecation bonds from the whole-salers evidencing such floting charge.

Id/- R.T.K.
dt/- 11/10/

Id/- P.M.L.
dt/- 11/10/

U.R. to R.D. No. 11472 , dated the 14th Oct. 1949.

V.v.k. 12/6/56/

50.

R.I.No. 12957 d.13.8.49.

A.L.R. Reply may be:—

The view taken by the Collr. E.K. in his letter at pp. 17 to 19 ante is correct. Mr. Gyte would be entitled (See Section 64 C.P.C.) to the land and the refund of Rs. 1030/410-

Id/- R.T.K.
dt/- 13/9/

R.L.A.

Id/- P.M.L.
dt/- 14/9/

U.R. to R.D. 10455, dt. 15-9-49.

V.v.k. 15-9- 49.

SC.

Office of the R.L.A.

Government loan to Charotar Gramodhar Sahakari Mandal.

Security for Bombay Co-operative Societies Act, section 65 65(1).

Section 65(1) of the Bombay Co-operative Societies Act, 1925 would not be helpful to Government as the recovery of Government loan as arrears of land revenue would be subject to the prior charge, if any. As the Bombay Provincial Co-operative Bank appears to have a first charge on the assets of the Mandal for its loan, Government can claim only a second charge on the assets of the Mandal for its loan, and considering the value of the assets of the Mandal and other things being equal, even a second charge appears to be an adequate security.

Id/- P.M.L.
dt/- 26/11/

Remembrancer of Legal Affairs.

U.R. to D.D. 13629, dated the

28th November 1949.

V.v.k. 12/6/56/

50.

Office of the R.L.A.

mbay -operative ciety Sub-le (1) of le 48.

Section 43 of the Bombay Co-operative Societies Act and Rule 48 of the Bombay Co-operative Societies Rules are intended for different purposed, The former provides for an inquiry by the Registrar into the Constitution, working and financial condition of the Society, while the latter empowers the Government to remove all the members of the Committee of a Society and to appoint a new Committee or to remove any members of the Committee of the Society and appoint one or more members, as the case may be, in the place of a member or members so removed. Obviously the object of Rule 48 is to remove all or any of the members of the Managing Committee who a e found to be acting arbitrarily and unconstitutionally to the prejudice of the interest of the Society and of the members in general.The inquiry under section 43 is to be instituted by the Registrar of his own motion or on the requisition of the Society or of the members thereof with a view to find out the defects, if any, in the working of the Society and its financial condition. In the present case, a 'show-cause' notice was issued to the Managing Committee under the second proviso to Rule 48 sub-rule (1) on the ground that the members were acting in a high-handed and unconstitutional manner. Government will have to decide from the explaintion offered by the Managing Committee whether the charge of high -handedness and unconstitutional methods of the Managing Committee is or is not proved .The question about the working of the Society should not be mixed up with the charge levelled against the Managing Committee under Rule 48 sub-rule (1). If the working of the Society is defective or its financial condition unsound, of course, it would be quite competent for the Registrar to order an independent inquiry under section 43 of the ACt. That inquiry would be entirely different from the proceedings taken under Rule 48 Sub-rule (1). Govern-

ment should, therefore, consider, at this stage, whether the members of the Managing Committee did or did not act unconsititutionally and whether they should nr should not be removed from Office. If Government comes to the conclusion that these members of the Managing Committee have acted unconstitutionally, Government may remove them and appoint a new Committee under Rule 48 sub-rule (1). If, however, Government considers that the charge against the Managing Committee is not substantiated or is disproved by the Explanation offerred by it, then the 'show cause' notice may be cancelled. Without prejudice to the action proposed under Rule the Registrar may order an Inquiry to be proceeded with under section 43 if the affairs of the Society are not satisfactorily carried on.

Rule 48 sub-rule (1) does not prescribe the procedure of the inquiry. All that is necessary under that Rule is to give an opportunity to the member or members of the Managing Committee proposed to be removed to show cause and after considering the explanation, if any, offered by such member or members against whom the 'show-cause' notice is issued to take action. In the present case, it appears that the members have offerred some explanation and if their explanation requires to be further examined by a reference to documents and recording any other evidence, it would be open to Government examine those documents and hear such evidence before taking any final action. The inquiry should conform to the principles of natural justice.

Id/- P.M.L.
dt/- 24/11/

Remembrancer of Legal Affairs.

U.R. to Dev. Deptt., No. 13508, dated the 24th November 1964

V.v.k. 12/6/56/ 50.

Office of the R.L.A.

Under G.R. D.D. No. 18 , dated 2nd Feburary 1950, Government has agreed to contribute to the share capital of the Bagaitdar Co-operative Sugar Producers' Society, Limited, a lomited liability Society registered under the Bombay Co-operative Societies Act, 1925 , withan an authorised share capital of Rs. 15 lacs. an amount equal to the subscription collected by the Society from its members subject to a maximum of Rs. 6 lakhs on certain conditions specified in the G.R.

2. The Development Department desires to have the R.L.A.'s opinion on the following two points :-

(a) Whether the proposal to contribute to the share capital of the Society to the extent of Rs. 6 lakhs is ultra vires section 6 of the Bombay Co-operative Societies Act, 1925 , and if so whether it is possible to exempt this Society from the operation of that section by an order issued under section 67 of the Act; and

(b) whehter conditions (1) and (2) of the G.R. which provide for the repayment of the Government share capital and particularly condition (2) which provides for the repayment of the share capitl in 3 equal annual instalments within 3 years of the repayment in full of the loan initially taken from the Industrial Finance Corporation of India , are valid conditions emforceable against the Society.

3. Section 6 of the Bombay Co-operative Soceities Act, 1925, provides that where the liability of the members of a society is limited by shares, no member other than a society shall--

(a) hold more than such portion of the share capital of the society subject to a maximum of one-fifth, as may be prescribed by the rules, or

(b) have or claim any interest in the shares of the society exceeding ten thousand rupees, provided that if the society is a housing society, a member may have or claim an interest in the shares of the society not exceeding twenty thousand rupees.

v.k. 12/6/56/Government can contribute to the share capital of the Society

only as its member and not being a Society, it is clear that it cannot exceed , the limits prescribed by this section. As regards D.D.'s proposal to exempt the Society from the provisions of this section by an order under section 67 it appears that such exemption was granted in the case of the Provincial Industrial Co-operative Society in consultation with the R.L.A. (Shri Vyas) (Please see R.L.A.'s opinion No. 2606 has since been considered by the R.L.A. in his opinions No. 6109 , dated 11-3-1947 No. 8607, dated 10-7-1948 and No. 10250 , dated 30-10-1948. It has been held in these opinions that the provisions of section 67 cannot be used for doing something which in effect would amount to amending the Act i.e. the provisins which are mandatory or prohibitory in nature in the case particular class or claims of societies cannot be got rid of by an exemption order passed under section 67. The provisins of section 6 are expressly made applicable in the case of societies with limited liability and the intention underlying the section appears to be to encourage Co-operative effort amongst small investors. It may, therefore be inexpedient to exempt the society from the provisions of that section.

5. Conditions (1) and (2) of the G.R. provide as follows :-

> "(1) The Society may repay Government share capital after 5 years of its working provided that the repayment does not bring the total share capital of Society below Rs. 16 lakhs .
>
> (2) The Society shall in any event complete the repayment of the share capital in 3 equal annual instalments within 3 years of the repayment in full of the loan initially taken from the Industrial Finance Corporation of India."

Condition (i) gives an option to the Society to return Government's capital while condition(ii) makes it obligatory upon the Society to return it after a specifies period. It is true that section 68 of the Bombay Copoperative Societies Act provides that the provisions of the Indian Companies Act 1913, shall not apply to co-operative societies. But that could not prevent the fundamental principles

of law relating limited liability concerns being applied by analogy unles expressly otherwise provided for. According to these principles a company cannot purchase its own shares or otherwise reduce its capital in any case where the rights of the creditors are likely to be affected and for this reason the reditors of a company are invited to deal w th the comapny on the footing of its registered capital being a reality, of the registered share-holders being liable for the unpaid portion of 'eir shares and of the Company having re eived the paid up capital which appears in the various registers and returns, and if this liability to pay up we e to be released or the paid up capital returned to share-holders or the creditors' security in any manner given away or tampered with it would seriously alter their position. "It cannot be questioned " said Lord Herschell in Trevor V. Whitworth (12 A.C. 414) , "that a company cannot employ its funds for the purposes of any transactions which do not come within the objects specified in its memorandum ..... Thee capital may no doubt be diminished by expenditure upon reasonbly incidental to, the objects specified .A part of it may be lost in carrying on th business or operations authorised. Of this all persons trusting the company are aware and take the risk. But I think that they have a right to rely on the capital remaining undiminished by any expenditure out side those limits or by the return of any part of it to the shareholders." It is not the object of this Society to purchase its own shares. Nor could such object be authorised u der the provisions of the Bombay Co-operative Societies Act, 1925. Section 27 of the Act expressly allows reduction of share capital by refund of the value of shares to the heirs or legal representative of a deceased member but that is o ly in case they or their nominees are not elected as membe s. In the absence

of-a

V.V.K. 12/8/58.

of any other specific provision in the Act the return of share capital to a member would amount to the purchase by the Society of its own capital thereby causing a reduction in the limited capital which is the creditors', only fund that cannot be reduced other wise than in the prosecution of the Company's objects. If at the period specified in condition (2) in the U.R. the Society has sufficient funds to meet its liabilities, Government as a share holder cannot claim a preference over the Society's other creditors in re-payment of its capital. The proper course therefore, would be to have a special class of fully-paid -up shares which are known as redeemable preference shares payable out of the profits of the Society the surplus profits, being every year Credited to a Separate Account usually known as Capital. redemption reserve fund and the shares redeemed out of this fund and not out of the general capital of the Society. This may be done by suitably amending the bylaws of the Society.

Id/- P.M.L.
dt/- 1/5/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 297- Confl. dated the 2nd May 1950.
Please see R.L.A.'s opinion No. 10113 dated the 26/6/51.

V.v.k. 12/6/56/

50.

Legal Department .

The view of the Registrar, C.S. in his letter at pages 13-14 is correct subject to the observations in the next paragraph.

2. It may be observed that in R.L.A.'s opinion No. 7365, dated 6th October 1932, it was pointed out that section 59 of the Act does not in terms apply to an order passed under section 55 . In view of the new self-contained provisions in rule 44A , the words "and every Order issued under section 55" which occur in rule 39 and which were the cause of the present reference may be deleted.

Id/-
dt/- 26/4/

Addtional Secretary to Government.

U.R. to R.D. No. 5740 , dated the 27th April 1950.

V.v.k. 12/6/56/

50.

Bombay Co-operative Societies Act, 1925, sec.24A-Recovery of instalments due to Govt. Servants Co-operative Credit Society Ltd. ,Baroda.

Office of the R.L.A.

Under sub-section (1) of section 24A of the Bombay Copperative Societies Act, 1925 , member of a society can execute an agreement in favour of a society providing that his employer shall be competent to deduct from his salary such amount as may be specified in the agreement and to pay that amount to the society Sub-section (2) requires the employer, on the execution of such agreement, to make the deduction in accordance with the agreement and to pay the amount to the society. The agreement in this case was executed by Shri Chitre on 18-6-1948 i.e. before the merger of Baroda State. On that date the Baroda Sahakari Mandali Nibandh was in force in that State. There was a provisi n in that law similar to section 24A of the Bombay Act. When the Bombay Co-operative Societies Act, 1925 . was first applied to Baroda State by the Baroda State (Application of Laws) Order, 1949 , the Baroda Act was repealed, but the validity of action taken thereunder was saved. Therefore the agreement executed by Shri Chirte which was valid under the provisions of the Baroda law continues to be so under the Bombay Act, and consequently Government would be bound to deduct the instalments from Shri Chitre's salary as requested by the Society.

Id/- P.M.L.
dt/- 9/6/

U.R. to B.D. No. 7898 ,dated the 12th June 1956

V.v.k. 12/6/56/

Office of the R.L.A.

Claim for priority of income tax dues over dues of co-operative societies for which property is attached and sold under section 59(1)(b).

Bombay Co-operative Societies Act, 1925- sections 24, 59(1)(b).

Income tax Act, 1922--- section 46(2).

Under Sub-section (1) of section of the Bombay Co-operative Societies Act, 1925 the claim of the Crown in respect of land revenue or any money recoverable as arrears of land revenue has priority over any debt or outstanding demand owing to Society by any member etc. Subsection (2) of section 46 of the Income Tax Act, 1 provides that the Income -tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector , on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue. It is true that the effect of this provision is not to convert income-tax into an arrear of land revenue due in respect of the land which may be brought to sale for the realisation of income-tax, but merely to extend the procedure prescribed by the Revenue Recovery ACt to the recovery of arrears of income tax. (Cf. Kadir Mohideen V. Muthukrishana 26 Mad. P. 230) But in Soniram Rameshwar Vs. Mary Pinto, 1934 I.T.R. 58(followe in Secretary of State for India Vs. Ma Nyein and others A.I.R. 1937 Rang. 380), it was held that in respect of income-tax already assessed the Crown had a right of preference over unsecured debts and if there are funds in the Court's custody of which payment can be made, the Court can order payment without prior attachment. The fact that a creditor has attached the assessee's property can give him no preference over the Crown. An attahcment confers no title to property. (See Sunderam's Law of Inocme- tax p. 1939). In the present case the property of the judgment debtor Shri Gokuldas Dayalji was attahced and sold under section 59(1)(b) of the Bombay Co-operative Societies Act, 1925 and not in pursuance of any decree of a civil court and the amount is still lying in the Government treasury. V.v.k. 13

Since under section 24 all Government dues have a prior claim over other dues there would be no illegality if the dues of the income-tax authority are first satisfied. The Agent of the Bank appears to contend that he is only one of the four parteners of the unregistered ~~fxx~~ firm and has paid his share of the income-tax in the firm and therefore this amount cannot be credited to the Income Tax authority. This contention does not appear to be correct. The liability of a partener is joint and several (pa. see section 25 of the Partnership Act, 1932) and consequently all the income -tax dues inrespect of the firm can be recovered from the property of Shri Gokuldas Dayalji .

Id/- P.M.L.
dt/- 26/6/

Remembrancer of Legal Affairs.

U.H. to D.D. No. 8460 , dated the 20th June 1950.

V.v.k. 13/6/56/
5C.

Office of the R.L.A.

Ordinarily when a charge on immoveable property of the value of Rs. 100/- or upwards is reduced to writing it will have to be duly stamped and registered under section 17(1)(b) of the Indian Registration Act, 1908 . To avoid these formalities in creating a charge section 24A of the Bombay Co-operative Societies Act, 1925. was added by Bombay Act XXVIII of 1948 under which a member has to make a declaraion for creating a charge on the land owned by him for the payment of the loan which the society may sanction. The nonwobstante clause in this section not only obviates the necessity of such a declaration from being stamped but it also avoids the declaration being registered under section 17(1)(b) of the Indian Registration Act, 1908 even if the charge is on immoveable property of the value of Rs. 100/- or upwards .The view takfn by the Secretay, Development Department at ante is correct.

Id/- P.M.L.
dt/- 29/6/

Remembrancer of Legal Affairs.

U.R. to Dev. Deptt. No. 9004 dated 29th June 1950.

V.v.k. 13/6/56/

5C.

Legal Department.

The Registrar after going through the evidence produced by the members of the Society has come to the conclusion in paragraph 16 of his report that there is no justification for allowing the Managing Committee to continue in office any more. The members of the managing Committee were given opportunity to explain the charge and Government may accept the reasons given by the Registrar for the removal of the Managing Committee. From the facts as found by the Registrar, it appears that there are sufficinet grounds for taking action under rule 48 of the Bombay Co-operative Societyes

Id/-
dt/- 3/7/

Additional Secretary to Government.

U.R. to D.D.No. 495-Confl dated the 4th July 1950

V.v.k. 13/6/56/

SC.

Office of the R.L.A.

Revision Application under sec. 64A against Registrar s order under a proviso to sec. 54 of Bombay Co-operative Societies Act, 1925.

Under the proviso to section 54 of the Bombay Co-operative Societies Act, 1925, power to suspend proceedings in the matter until the question is tried by a regular suit vests in the Registrar and that power can be exercised by hm if he thinks so fit do do, considering the complicated questions of law and fact invaled in the case., It is, therefore, apparent that the power to consider whether the proceedings should be suspended or not has to be exercised by the Registrar himself and the Registrar cannot leave that question to the decision of the arbitrator. Consequently the order passed by the Registrar declining to suspend the arbitration proceedings in the present case, not being in conformity with the proviso to section 54, is not lawful.. Under section 64A the Provincial Government may call for and examine therecord of ny proceeding of any officer subordinate to it, except those referred to in sub-section (6) of section 63-A for the purpose of satisfying itself as to the legality or properiety of any decision or order passed and as to the regularity of the proceeings of such offier. The excepted category consists of proceedings in which an appeal lies to the Tribunal in respect of which the Tribunal enjoys similar revisinal authority. An order by the Registrar declaining to suspend proceedings under the proviso to section 54 is not appealable to the Tribunal. For, under setion 56 it is only against the decision of the Registrar or his

nominee" used in section 56 have reference to the identical words used in the first paragraph of section 54 and do not include an order made by the Registrar suspending or declining to suspend proceedints under the proviso to section 54. Such order can, therefore, be cancelled by Government in the revisional jurisdiction under section 64A. Section 64A gives very wide powers to Government to modify, annual or reverse any decision or order or proceedings and to pass such order thereon as to them may seem fit. It is, therefore open to Government to set aside the Registrar's order and suspend the arbitration proceedings under the proviso to section 54, until the question is decided by regular suit. (See R.L.A.'s opinions No. 5749 dated 14-7-38. No. 871 dated 23-1-39 and No. 5917 dated 27/5/39).

Id/- P.M.L.
dtØ- 12/6/

Remembrancer of Legal Affairs.

U.R. to S.D. No. 7975 dated the 13th June 1950.

V.v.k. 13/6/56/

SC.

Office of the R.L.A.

Power to nominate the first Board included power to convene/by a stature, everything indispenasable to their exercise the first meeting of the meeting of the Board.

Bom. Coop. Societies Act, 1925- Bye-laws 22,

When powers, privile ges or properties are granted or enjoyment is impliedly granted also as it would be in a grant to private, persons." (See Maxwell p. 310). Under bye-law 22 of the bye-laws of the Belgaum District Industrial Co-operatives and Village industries, Bombay Province, it is apparent from this provisin that the power to nominate the first Board of Directors vests in the Joint Registrar, but there is no provisin in the bye-laws as to who should convene thefirst meeting of the Board of Directors nominated by the Joint Registrar. To constitute a valid meeting it is essential that it must be properly convened, that is to say, convened by a person having authority so to do, In the absence of any provisi n in the bye-laws , the appointment of the first Board of Directors without thepower to convene the first meeting theeo, would be ineffecutal. Consequently, the power to cnvene the first meeting could impliedly be presumed to have been given to the Joint Registrar who is invested with power to nominate the first Board of Directors, There would be no legal objection to the Joint Registrar Convening the first medting of the Board of Derectors nominated by him. That Board thus convened may first elect a provisinal Chairman for themeetinf and then proceed to elect the Charman and Vice-Chairman under bye-law 25.

Id/- P.M.L.
dt/-

Remembrancer of Legal Affairs.

V,v.k. 1346/56/

Office of the F.L.A.

Com.Cooperative Societies Act, 1925 Section 59(1).

Section 59(1) of the Com. Cooperative Societies Act, 1925 contemplates the issue of a certificate by the Registrar or the liquidator after all possibilities of the original Order being modified or set-aside in appleal ro in revision are exhausted and once the certificate is issued, the order would be deemed to be a decree of a Civil Court whereupon neither the tribunal nor Government would be competent under the Act to interfire with its execution by issuing any stay order or interlocutory order.

Id/- P.M.I.
dt/- 3/7/

Remembrancer of LegalAffairs.

U.R. to Development Department No. 9244,

dated the 4th July 1950.

V.v.k. 13/6/56/

SC.

Office of the R.L.A.

The view taken by the Tribunal is substantially correct, although I feel that it would have been open to the Tribunal to hold that the certificate granted during the pendency of the application was a nullity. Section 59 of the Bombay Co-operative Societies Act, 1925, contemplates that a certificate is to be given if the award is not carried out. The award would naturally mean, where an application has been made to the Tribunal, the award as modified by the Tribunal under section 54A. The Tribunal has even the power to set aside an award and refer back the dispute to the arbitrator, and section 59 in terms speaks of the order etc. made under sub-section (3) of section 54A, which means that a certificate is to be granted in respect of the order of an award as would be finally made in consequence of the application to the Tribunal. It seems that during the pendency of the application it would be incompetent to grant a certificate and thereby deprive the Tribunal of power to modify or set aside the award. Since, however, the Tribunal itself declined to take the view that the certificate was a nullity, it would be unexpedient for Government in its general power under section 64A to treat the certificate as a nullity and then to proceed to set it aside. Once the certificate is granted, the award is deemed to be a decree and becomes executable by a Civil Court, so that interference with it at this stage would not also be proper. The better course would be to advise the aggrieved party (1) to plead in execution that the certificate was a nullity, and that, therefore, the award cannot be executed as a decree, or (2) to commence independent civil proceedings to get it declared as a nullity.

No: 11584 dt/ 14-8-50

Id/- P.M.L.
Remembrancer of Legal Affairs.
V.v.k.-13/6/50

Office of the R.L.A.

Whether Registrar's Order before merger of Baroda can be revised , Co-opertive Societies Act, 1925-- sec. 64A.

The view taken by Parliamentary Secretyary (Sh B.D.Deshmukh)is correct.The Baroda Co-operative Societie Act whebeunder the Baroda Registrar's Order had become final, did not provide for revisional jurisdiction of overnment.Section 64A of the BombayCo-operative ocieties Act, 1925 which provides for such revisional urisdiction of Government was applied to the Baroda rea after the Registrar passed the order. Consequently, hat provision would not cover the case decided by the egistrar of Co-operative Societies, Baroda and give urisdiction to Government to revise his Order (see 949 Canada Law Reports 89). The Kolhapur case referred o by R.D. has no bearing on this case.

Id/- P.M.L
dt/- 20/8/

Remembrancer of Legal Affairs

.R. to D.D. No. 12276 , dated the 28th August 1950.

V.v.k. 13/8/50/

50.

Legal Department.

In order to enable Government to help co-operative societies by contributing to their share capital and to remove any doubt as to whether the provisions of the Bombay Co-operative Societies Act, 1925, permit such course, it will be desireable to amend the Act by the insertion of an express provision. The Development Department will have to decide what rights Government should have in the management of the societies to the share capital of which such contribution would be made. The draft suggested by Development Department will not do. If the conditions are to be prescribed by rules, they will have to be consistent with the other provisions of the Act. But if the intention of the Development Department is to provide that such conditions should override any other provisions of the Act, an express provision to that effect will be necessary.

Id/-
dt/- 7/9/
Additional Secretary to Government

U.R. to D.D. No. 12935, dated the 12th September 1950.

V.v.k. 13/6/56/

5C.

Office of the R.L.A.

It is true that section 55 of the Bombay Co-operative Societies Act, 1925 , to which the Assistant Registrar refers his order dated 16th Septmeber 1949, does not in terms authorise the granting of a stay. However, under section 54 the dispute could have been refered to the Registrar for decision or even to the arbitration by the Registrar himself , and had it been so referred , the Registrar could have exercised the powers inherent in any tribunal to maintain the status quo pending the decision of the dispute, particularly where the decision of the dispute would become meaningless if the status quo were not contained as in this case. Similarly, the Registrar would have the inherent power to maintain the status quo by a stay order while referring the dispute to arbitration of a third party with a view to prevent the ends of justice bing defeated.Section 55(2) ,which is now inserted in the Act, merely affirms the existene of such inherent power and does not give a new poser. It is upon this reasoning that the the stay order made by the Assistant Registrar can be held valid.

Id/- P.M.L.,
dt/- 9/9/

Remembrancer of Legal Affairs,

J.R. to D.D. No. 12950, dated the 11th September 1950.

V.vk. 13/6/56/

Office of the R.L.A.

The view expressed by the Bombay Co-operative Tribunal in the concluding part of paragraph 7 of their judgment is not correct. It is true that by virtue of paragraph 6(3) of the Baroda State (Application of Laws) Order, 1949, the Huzur Adalat continued to exercise its function under the Baroda Co-operative Societies Act but in fact that authority ceased to function with effect from 1st May 1949 under the Administration of Baroda State Order, 1949. On the application of the Bombay Cooperative Societies Act to the Baroda State with effect from 30th July 1949 under the Baroda State (Application of Laws) Order the Bombay Co-operative Tribunal was vested with jurisdiction to hear appeals against awards passed under section 55 of the Bombay Co-operative Societies Act. Consequently the question about the continuance of the Huzur Adalat as raised by the Tribunal does not survive. The only point material is one of limitation for the appeal.

The Assistant Registrar, Baroda, passed the decision on 18-6-1949 and the period of limitation for an appeal against that order under the Baroda Co-operative Societies Act was two months. On 30-7-1949 , when came into operation, the limitation of two months on which dated the Baroda State (Application of Laws) Order, 1949, ~~[illegible]~~ Came into operation the limitation of two months had not yet expired, but after that order came into operation, the period of limitation was curtailed to one month only by virtue of section 56 of the Bombay Cooperative Societies Act. Since the period of limitation had been curtailed and the appeal was still within time when the Bombay Co-operative Soceities Act was applied to the Baroda Area., it appears on the principle stated in Khushalbhai v. Kabhai (6 Bom. 1926) which was followed by the Bombay High Court in First Appeal No. 175 of 1947 , the new rule of limitation contained in section 56 of the bombay Co-operative Societies Act will not apply. The appeal would still be in

time provided it is made to the Bombay Co-operative Tribunal within two months from the date of the receipt of the intimation of the decision of the Assistant Registrar. As stated above, the Bombay Co-operative Tribunal is vested with jurisdiction and the appeal was within time. The papers may, therefore, be returned to the Tribunal to treat it as an appeal and to dispose of it according to alaw .

Id/- P.ML.
dt/- 7/9/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 12818 , dated the 7th September 1950 .

V.v.k. 13/6/56/

50.

Office of the R.L.A.

Continuance of registration of Societies in Baroda under Co-operative Societies Act.

It is clear from para.5(iii)(a) of the Baroda States (Application of Laws) Order, 1949, that a Society registered under the Baroda Co-operative Societies Act, is deemed to be registered under section 10 of the Bombay Co-operative Societies Act, 1925. The Bombay Government is proceeding on this assumption. Attention is also invited to the proviso to section 4(1) of the Bombay Merged (States) Laws Act, 1950 (IV of 1950) which keeps alive orders of registration as if they were made under section 10 of the Bombay Act. The presumption made by the Government of India in its letter at page 1 ante is correct

Id/- P.M.L.
dt/- 17/10/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 14602 , dated the 18th October 1950.

V.V.K. 13/6/56/

5C.

Office of the R.L.A.

Bombay Cooperative Societies Act, 1925. Section 7(1) & 66.

The first question refered to the Remembrancer of Legal Affairs for consideration is whether the Khudabad Bhaibund Co-operative Credit Bank which was registed under the Bombay Co-operative Societies Act, 1925, in the year 1926, with head-quarters at Hyderabad (Sind) and which after the separation of Sind in 1936 continued to function there can, after the ~~xxxx~~ partition of India, be allowed to funtion ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ in Bombay with out fresh registration. Though when the society commenced functioning in 1926, it was registered under the Bombay Act and though as pointed out in Remembrancer of Legal Affairs U.R. No 6706 dated the 17th July 1948 after the separation of Sind, that Act continued to be operative in Sind, the provisions of the Act became operative as an Act of Sind and not as an Act of Bombay. The Society in quesion was therefore deemed to be registered under the Sind Act. The position has been further clarified by section 18(3) of the Indian Independence Act, Societies registered under the Sind Co-operative Societies Act cannot be deemed to be societies registered under the Bombay Act though all the members of the society have migrated to India and are stayi ng in Bombay. Section 69 of the Bombay Cooperative Societies Act, would also be attracted in this case for though the Society in question was registered outside the State of Bombay, it has not established a branch or place of business in the Bombay, it has not left its head-office in Pakistan so that the Office in Bombay can be said to be a branch or place of business. The only course appears to be for the Society to obtain fresh registrati n under the Act.

V.v.k. 13/8/56 sc

2. The next question is whether the bank can be registered under the Bombay Co-operative Societies Act, 1925 on the strength of its old assets and liabilities as they stood on 30-6-1947. The object under lying this proposal is to facilitate the Bank recovering debts due from the members irrespective of the fact that they were incurred prior to the partitioning of India. Under sub-section (1) of section 7 of the Bombay Co-operative Societies Act, when the object of the Society is the creation of funds to be lent to its members, all the persons forming the Society must be residing in the same town or village or in the same group of villages. section 9 requires an application to be made for registration. Section 10 provides that if the Registrar is satisfied that a society has complied with the provisions of the Act and the Rules and that its by-laws are not contrary to the Act and the Rules he may register the Society and its by-laws. Under rule 2 of the Bombay Co-operative Societies Rules, 1927, an application for registration is required to be made in the form in Schedule A. The information required under that form inter alia is about the number and value of shares proposed to be issued. If he capital is to be raised by shares, and in other cases about the amount of the capital proposed to be raised on loan or deposit. TheRegistrar will have to satisfy himself about all these matters before he can register the Bank under the Act. The assets as they stood 3 years back will not justify registration now. The registration contemplated by the Act is propective and not retrospective. On registration a Society becomes a corporate body distinct from the persons composing it (vide sec. 23). Such a right cannot be conferred retrospectively. If the fulfillment of any of the conditions of registration under section 7(1) is found to be difficult, it is open to the Government under secton 66, by special orie, to exempt the Society from any of the requirements of the Act as to registration.

Id/-P.M.L.
dt/- 29/9/
Remembrancer of Legal Affairs.

v.k. & U.R. to D.D. No. 13752, dated the 29th September 1950.
3/6/ SC.

Legal Department.

Since Shri Pathare has not so far taken any steps to go to Civil Court to get the certificate declared as a nullity as advised by the Remembrancer of Legal Affairs in his opinion No. 11584 , dated the 14 th August 1950, there is no other alternative for the Assistant registrar but to take steps to get the award certified by him for execution through the revenue authorities as requested by Shri Shukre. This would not prejudice the ritht of Shri Pathare to file a suit and to obtain a stay order pending the disposal of he suit.

Id/-
dt/- 24/10/

Additional Secretary to Govenmment

U.R. to D.D. No. 14905 , dated the 27th October 1950 .

V.v.k. 13/6/56/
5C.

Office of the R.L.A.

Whether it is necessary to comply with provisions of sec.52 where the Society is already wound up
Bombay Co-operative societies Act, 1925 sec. 52.

The provisions of section 52 of the Bombay Co-operative Societies Act, 1925, are nodoubt mandatory but since the societies were liquidated before the merger of the Baroda State with the State of Bombay, it will obviously not be possible to ascertain the general wished of the members of those societies as required by law. Under certain circumstances, compliance with the provisions of statutes which prescribe how something is to be done wil be excused. Thus, in accordance with the maxim of law, Lex non cogit ad impossibilea, if it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstanced over which the persons interested had no control these circumstances will be taken as a valid excuse (See Craies on Statute Law page 239). Since it is impossible in the present case to comply with the obligations imposed by law, viz. ascertaining the wished of the members of the Societies, there would be no objection to the Registrar of Co-operative Societies utilising the surplus amoun ts for objects stated in section 52. If the Registrar considers that by handing over the amount to the Gujarat Pradesh Sahakar Sangh of Baroda for its utilisation for the progress of the Co-operative movement an object of public utility of local interest within the meaning of clause (d) of section 52 would be served, then there is no objection to do so.

sd/- K.M.L
dt/- 8/11/

Remembrancer of Legal Affairs.

U.R. to Development Deptt. No. 15649, dated the 8th November 1950.

V.v.k. 13/6/56/
5C.

Office of the R.L.A.

Bombay Co- operative Societies Act, 1925. Section 24AA Bombay Agricultural Debtors Relief Act, 1947 Sections 40 and 48.

The view taken by the Secretary, Development Department, is correct.

2. Under section 24AA of the Bombay Co-operative Societies Act, a member who borrows money is required to make a declaration from the society creating a charge on his immoveable property for loans advanded to him as well as a floating charge for the loans to be thereafter advanced to him. 'Charge' as defined in section 100 of the Transfer of Property Act does not amount to a mortgage but merely created a right to payment out of the property specified without any transfer of an interest in any such property. The broad distinction between a mortgage and a charge as stated by Das J. in Raja Shri Shivprasad v. Rane Madhav, 1922 Patna 387 at page 392 is this : "That whereas a charge only gives a right of payment out of a particular fund or a particular property without transfering that fund or property, a mortgage is in essence a transfer of an interest in a specific immoveable property." Section 48 of the Bombay Agricultural Debtors Relief Act, 1947, prohibits alienation by a debtor of his property before the discharge of him debts under the Act. "An alienation is as much to say as to make a thing another man's or to alter or put the possession of lands or other things from one to another . 'Alienation' imports an actual transfer of title" (see Ayer's Law Lexicon page 53). As stated above, a charge creates no interest in the immpveable property at all while an alienation provides for an actual transfer of interest in or title to an immoveable

property. Consequently a charge would not amount to an alienation and section 40 of the Bombay Agricultural Debtors relief Act would be no bar to creating a charge by an agricultural debtor under section 24AA of the Bombay Co-operative Societies Act.

Id/- P.M.L.
dt/- 13/11/

Remembrancer of Legal Affairs

D.R. to D.D. No. 15828 dated the 13th November 1956.

V.v.k. 13/6/58/

50.

Legal Department.

The Remembrancer of Legal Affairs opinion on the question raised by the Development Department is given in U.R. to Development Department No. 11498, dated the 11th August 1950.

2- No permission appears to have been asked for by the Sanap Printing Press for reprinting copies of the Bombay Co-operative Societies Act, 1925.

Id/-

For Secretary to Government.

U.R. D.D. No. 17598, dated the 12th December 1950.

V.vk. 13/6/56/

50.

Purchase of share by an heir before transfer of the shares of the ~~xxxxx~~ deceased member- Bombay co-operative Societies Act, 1925, Sec. 27(1).

Section 27(1) of the Bombay Co-operative Societies Act,1925 inter alia provides that : "On the death of a member of a society, such society may transfer the share or interest of the deceased member to ~~xxx~~/such person as may appear to the committee to be the heir or legal representative of the deceased member if duly elected a member of the society." 'Member' as defined in section 3 clause (c) includes a person joining in the application for the registration of a society or a person admitted to a membership after registration in accordance with the rules and by-laws applicable to such society. Section 17 provides that "no person shall exercise the right of a member of a society unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules or the by-laws of such society." It appears clear from this provision that the rights of membership can be claimed by the person only on payment of such fee in respect of his membership or acquisition of such interest in the society as may be prescribed by the rules or by-laws of such society, that is to say, on his purchasing the requisit number of shares. Apparently this provision contemplates the election of a person as ~~xxxxx~~/member of a society even though he has not paid the admission fees or purchased the requisit number of shares. Consequently, the view taken by Shri B.B.Potdar of Belgaum that the heir of a deceased member should first purchase some share before he can be elected a member of the society to entitle him to the transfer of the shares standing in the name of the deceased is not quite correct. Such heir can apply to the society for electing him as member thereof and on such election, it would be quite competent for the society to transfer the shares of the deceased member to him without insisting on his purchasing the share previously. Such election to the membership and the

transfer of shares can even be done simultaneously. In the circumstances, it does not appear necessary to amend section 27 as suggested by Shri B.B. Potdar.

Sd/- P.N.Lad,
19/1.

Remembrancer of Legal Affairs.

U.R. to D.D. No. 1274, dated the 19th January 1951.

4-Cs.

M.V.V.
3/7.

Office of the R.L.A.

Section 38 of the Bombay Co-operative Societies Act, 1925, provides that no society shall pay a dividend to its members at a rate exceeding 6¼ per cent. Rule 23 of the Bombay Co-Operative Societies Rules, 1927, provides that no registered society shall distribute any bonus shares beyond the dividend declared under section 38. This rule is presumbly made under clause (p) of section 71(2) which authorises the making of Rules for prescribing the conditions under which profits may be distributed to the members of a Society and the maximum rate of dividend which may be paid by societies. In construing the rule with the term "beyond" occurring therein, due regard must be had to clause (p) of section 71(2), and the rule cannot be so interpreted by construing "beyond" as equivalent to "except" ; for , a rule which provides that in cases where dividend is declared no bonus should be distributed would be beyond the power conferred by clause(p) of section 71(2). Therefore, in this context the expression "beyond the dividend declared under section 38" must be taken to mean and include the bonus upto the limit of dividend declared by a society under section 38 (see Emperor v. Nga Pya A.I.R. 1938 Rang. 485). This would mean that bonus can be declared only upto the limit of dividend declared, i.e. , if a dividend at the rate of 3.3/4 per cent. is declared by a Society, a bonus upto the limit of 3.3/4 per cent. only can be declared. Similarly, if a dividend is declared at the rate of 6¼ per cent. a bonus upto that limit can also be declared. The present rule does not lay down that the aggregate payment by way if dividend and bonus should be limited to 6¼ per cent. However, a rule prescribing such aggregate as a limit for the bonus can be framed under clause (p) of section 71(2) . If H.M. (Co-opn.tation) desires that the aggregate payment

A-Cs.
H.V.V.
3/7.

by way of dividend and bonus should not exceed 6¼ per cent a rule to that effect should be made. If Government considers that Societies are likely to evade payment of educational fund by paying bonus instead of dividend, it will be necessary to amend rule 26-A.

Sd/- P.M.Lad,
18/1.

Remembrancer of Legal Affairs.

U.R. to D.D. NO. 1223, dated 19th January 1951.

4-Cs.

M.V.V.
3/7.

Office of the R.L.A.

Rule 48(2) of the Bombay Cooperative Societies Rules, 1927, provides that when the State Government have appointed a new Committee under clause (a) of sub-rule (1), the State Government may direct that the members of such Committee shall hold office for a period not exceeding three years from the date of their appointment. In the present case the Committee was appointed under this rule for a period of two years with effect from 14.1.1949. The original period, therefore, expired on 14.1.1951. Without going into the question whether the original period could have been extended before its expiry, the R.L.A. is of opinion that the period having once expired, the Committee would cease to function, and it would not be possible to revive the life of the Committee by recourse to sub-rule (2) of rule 48.

Id/- P.M.L.
dt/- 24/1/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 1540, dated 24th January 1951.

V.v.k. 13/6/56/

60.

Office of the R.L.A.

Bombay Co-operative Societies Act, 1925.

Sections 11 & 13.

Rule 6-A.

It appears from the report of the District Magistrate, Ahmednagar, dated the 5th June 1950 on page 107 of the D.D. file No. 862 of 1950 that the election of the Managing Committee for the Bambori Multi-Purpose Society was held on 25-9-1949 and one Shri Shukre was duly elected the Chairman of the Society. His election was disputed and the matter was referred to arbitration and an award was passed upholding the election of Shri Shukre. That award has been now certified by the Assistant Registrar and it is to be executed through the revenue authorities. It is reported by the Registerar ~~xxxxxxxxx~~ in his lett dated the 7th October 1950 that, pending the execution of the award, the Society held its annual generl meeting on 14th September 1950 and has elected a new Managing Committee for the ensuing year with Shri Yasinbhai Hajibhai as its chairman. The question raised for the R.L.A.'s consideration is whether a special general meeting should be called to resolve the deadlock which has been created under the aforesaid circumstances.

Under section 11 of the Bombay Co-operative Societies Act, an annual general meeting is required to be called for the election of a Managing Committee for the ensuing year. The old managing Committee with Shri Shukre as its Chairman was elected on 25-9-1949 and it must evidently have been for once year. That period

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having already expired, the question of executing the award and restoring that Managing Committee and Shri Shukre to the office would not arise since by the lapse of time that award itself stands nullified. The new Managing Committee which has been elected on 14th Septmber 1950 seems to have been validly elected, for at the annual general meeting the Society was competent to appoint a new Managing Committee. This Committee being already in office, it appears that there would be no legal objection to allowing it to continue in office till the expiry of the period for which it was been elected. The question of calling a special general meeting does not appear to arise.

sd/- P.M.L.
dt/- 25/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 1620, dated the 27th January 1951

V.k. 13/6/56/

5C.

Legal Department .

The presumption made by the Secretary , Development Department is correct and the course suggested may be followed without going into the question of the validity or other wise of the election of the managing committee.

Id/-
dt/- 9/2/

Additional Secretary to Government .

U.R. to D.D. No. 2535 , dated the 10th February 1951.

V.v.k. 13/6/56/

SC.

Office of the R.L.A.

Bombay Copoperative Socities Act 1925-Sections 12 and 13,

It appears that the Managing Committee of the Saraswat Suburban Co-operative Housing Society, was superseded and a new Committee was appointed by Government under Rule 48 of the Bombay Co-operative Societies Rules, 1927,. But some members applied to the High Court for a writ of certiorari to quash the order made by the Government of Bombay removing the petitioners as members of the Managing Committee and appointing a new Managing Committee consisting of 5 persons, of whom 4 were not members of the said Society.The High Court granted the writ of certiorari setting aside the order of Government in so far as it purported to appoint persons not qualified to be members of the Committee as members of the Managing Committee of the Society and that it did not in any way affect the power of the Government to appoint in place of these persons any persons duly qualified to be members of the Society.Government has filed an appeal against that order and pending the appeal it appears it does not propose to appoint a new Managing Committee. The members of the Society have givn notice to the Secretary to Government, Development Department, requesting him to make arrangments for holding a general meeting of the Society for the election of a new Committee of Management and office bearers of the Society. Secretary, Development Department, observes "Surely the requisitioning members themselves cannot convence a meeting.The requisition has to be addressed in this case to the Secretay as the Chairman cannot validly continue to work " R.L.A. is requested to advise.

The view taken by the Secretary, Development Department, is correct.Under section 13 of the

R: 14/6/56 Bombay Co-operative Societies Act, 1925, a special---

special general meeting may be called at any time by a majority of the Committee and shall be called within a month-

(1)on the requisition in writing of one-fifth of the members of the Society, or

(2)at the instance of the Registrar, or

(3)in the case of a society which is a member of a federal society, at the instance of an officer of such federal society.

It is, therefore, clear from these provisions that the Secretary, Development Department, is incompetent to take any action for cal ing a special general Meeting. The requisition in writing of one-fifth of the members of the Society for calling a special general meeting has to be given ordinarily under the bye-laws to the Secretary of the Society (see Gupte's Co-operative Societies Act, p. 97). It is presumed that the Saraswat Suburaban Co-operative Housing Society has made a similar provision in the bye-laws.If, so, the requisition by members for a special general meeting is to be given to the Secretary of the Society particularly when the Chairman of the Committee appointed by Government cam in view of the High Court decision no longer functiom. No action can, therefore, be taken on the notice given to the Secretary, Development Department. Under section 12 a general meeting of the mem ers of the Society appears necessary-Consequently, in veiew of the deadlock created by reason of the decision of the Bombay High Court, the Registrar of Cooperative Societies may be instructed to call a special general meeting under section 13.

Id/-
dt/-
Additional Secretary to Government .

U.R. to D.D. 2839 , dated the 14th Feburary , 1951.

v.k. 14/6/56
SC.

No. 1673
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1) 29th January 1951.

From

P.M. Lad, I.C.S.,
Remembrancer of Legal Affairs,
Secretariat,

To

The Superintendent of Stamps,
General Stamp Office,
Bombay No. 1.

Subject :- Document No. Bom. 1483/50 , Conveyance Rs.7,705/4/0,
Nav Bharat Co-operative Housing Society Ltd.
Impounded by the Sub-Regr. of Bombay.

Sir,

With reference to your letter No. 12764/S dated 20-12-1950, I have the honour to forward my opinion on the subject noted above.

Yours faithfully,

Id/- P.M.L.

Remembrancer of Legal Affair

V.v.k. 14/6/56/

5C.

Office of the R.L.A.

Since the conveyance is executed by the Society and it relates to the business of the Society, it would be exempt from the stamp duty under Government Notification, (Revenue Department)10055/28 dated 22nd March 1939 (Superseding Government Notification, Revenue Department No. 7599 dated 28th May 1923 quoted by the Superintendent of Stamps) even though the duty is ordinarily payable by the purchaser, and it is immaterial whether or not the purchaser is a member of the Society.

Id/- P.M.L.
dt/-

Remembrancer of legal Affairs.

v.k. 14/6/56/

SC.

Office of the R.L.A.

Bombay Coperative Societies Act, 1925, Section 12,

The view taken by the Assistant Secretary, Development Department, is correct. "It has often been held for instance when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, then the Act was directory only and might be complied with after the prescribed time" (see Maxwell 9th edition, page 380). Section 12 of the Bombay Co-operative Societies Act which requires the society to call a general meeting of its members within three months after the dated fixed for making up its accounts for the year will have to be construed as merely directory and not mandatory. Consequently, the Managing Committee elected at a general meeting held even after three months after the date fixed for making up its accounts for the year will have to be considered as validly elected and can legally function.

Id/- P.M.L.
dt/- 30/1/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 1836, dated the 31st January, 1951.

V.v.k. 14/6/56

56.

R.I.No. 12745/25/7/50 /

It appears that one Shri Gabajirao Nathu Patil was a member of the parola Taluka Co-operative Fruit Sale Society and there was some debt which he owed to the Society. As he did not pay the amount due from him, the Society referred the case to the Registrar's nominee for decision under section 54 of the Bombay Co-operative Societies Act and the award was made against him on 1-11-47, that is to say, before the Act was amended by inserting section 63A whereby the jurisdiction to hear appeals against awards vested in the Tribunal. Shri Gabajirao did not file an appeal to Govt. within the prescribed time, i.e. before 1-12-1947. He subsequently filed a revision application to the Tribunal but the Tribunal held that since the appellate power vested in Govt. and the appeal became time-barred on 1-12-1947, and since the appeallate authority at that time was different, no appeal could lie to the Tribunal even if filed in time and consequently the revision application could not be entertained by the Tribunal .B.L.A. is requested to advise whether the view taken by the Tribunal is correct and whether Govt. can entertain the revision application

V.v.k. 14/6/56

5C.

Office of the R.L.A.

The view taken by the Cooperative Tribunal is correct.

Id/-
dt/- 9/2/

Additional Secretary to Government

U.R. to D.D. No. 2570 , Dt. 10th Feb. 1951.

V.v.k. 14/8/56/

5C.

Office of the R.L.A.

Government Resolution, Revenue Department, No. 4686/33, dated the 19th February 1936, which the Revenue Department has now pointed out, directed that after the Government dues for the current year are satisfied out of the sale proceeds, the remainder is to be distributed rateably between all those who are entitled to have their claims satisfied as arrears of land revenue including Government as regards their claim for past arrears. This Government Resolution was issue in view of Sivatia J's Judgment in S.A. No. 810 of 1930, Secretary of State versus Vedvyas, 38, Bom.L.R. 267 from the decision in Kanara C.S.No. 215 of 1927. In the Letters Patent appeal his view was confirmed. It was then decided not to file an appeal to the Privy Council although in view of the wording "or any money recoverable as land revenue" in section 24 of the Cooperative Societies Act, 1925, ranking priority over the dues of the Society the point was arguable. The Revenue Department may follow the decsion of Government ontained in the Government Resolution.

Id/-
dt/- 14/3/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 4215 , dated the 14th March 1951.

V.v.k. 5C.
14/6/56 1

Legal Department.

The view taken by the Deputy Registrar of Cooperative Societies , Poona, is correct and the mortgage deed should be executed by Mr. P.G. Rodricks and Mrs. Mary Rodricks jointly. (See the Solicitor's opinion No. 9709, dated the 29th August 1949)-

Id/-

Additional Secretary to Government.

U.R. to H.D. No. 5253 , dated the 2nd April 1951.

I.v.k. 14/6/56/

5C.

Office of the R.L.A.

It will not be correct to hold that sanctionn can now be accoreded under the Baroda Cooperative Societies Act, which is no longer in force. Section 63(3) of the Bombay Cooperative Societies Act, 1925 applies to offences under the Act i.e. to those mentioned in Chapter IX of the Act. The High Court in the last paragraph of its judgment appears to have realised this situation. In view of this position in law, a fresh prosecution can be launched against all the accused without any sanction.

Id/-
dt/- 30/3/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 5203, dated 2nd April 1951.

V.v.k. 14/6/56/

5C.

Office of the R.L.A.

Modification of Govt's order - 30 - Co-operative Societies Act 1925 - Sec 64A.

There is no objection to canduct two inquires similtanel sly.

2. It is presumed that the letter a copy which is proposed to be forwarded to the Society with reference to the letter dated the 15th May 1951 is the one at page 397 , of D.D. file No. 2281/45-IV .That letter refer to the previous correspondence. If the society ca lls for the copies of that correspondence, they will have to be supplied.

Id/-
dt/- 22/5/

Remembrancer of Legal Affairs.

U.R. to D.D. No. 475-Confl. dated the 23rd May 1951.

l.v.k. 14/6/56/
SC.

Legal Department.

Modification of Govt's order Co-operative Societies Act 1925 — Section 64-A.

The principle contained in section 14 of the Bombay General Clauses Act, 1904, namely, that power conferred on Government can be exercised from time to time, will not be applicable in this case. Revisional powers under section 64A of the Bombay Co-operative Societies Act, 1925 cannot be exercised by Government from time to time and having once exercised those powers Government has become functus officio. In this case Government by Government Resolution, Revenue Department No. 7904/33, dated 11th November 1947, revised the order of the Registarar under section 64A directing that a board of directors nominated by the Registrar for the first three years should look after the managment of the Bank. Government having once directed that the board of directors nominated by the Registrar for the first three years should manage the affairs of the Bank it cannot again exercise those powers so as to modify its own order for extending the period of the board by one year. The view taken by the Secretary, Development Department is correct.

Id/-

Additional Secretary to Governmen

R. to D.D. No. 7684, dated the 15th May 1951

V.v.k. 14/6/56/

5C.

Legal Department .

The view taken by Revenue Department in para 4 of its office note at page 19 ante is correct . The permission of Government to create a charge on new tenure land under section 24AA of the Bombay Co-operative Societies Act, 1924 would not be necessary. The issue of the draft Government Resolution at page 7 ante would not be in order.

Id/-

Additional Secretary to Government.

U.R. to R.D. No. 7192 , dated the 9th May 19

V.v.k. 14/6/56/
50.

OFFICE OF THE R.L.A.

Co-oprative Societies Act of 1925(Bom. VII of 1925), sec. 67.

.....

In the Prohibition Case the Supreme Court has hel that section 139(c) of the Bombay Prohibition Act, 1949, is valid and intra vires. Section 67 of the Bombay Co-operative Societies Act, 1925 , is in language similar to section 139(c) of the Bombay Prohibition Act. - Consequently, section 67 of the Bombay Co-operative Societies Act is valid and intra vires. If so, the scope of section 67 cannot be limited by any considerations such as expediency or otherwise as stated by the R.L.A. in his last opinion No. 297 -Confl. dated the 2nd May 1950 .Section 67 expressly provides that the Provincial Government may be general or special order to be published in the Official Gazette exempt any society or class of societies from any of the provisions of THIS Act". It appears, therefore, that Government has full power to exempt the Society in the present case from the provisions of section 6(a) as proposed by the Joint Registrar. The R.L.A. 's opinion No. 297-Confl. dated the 2nd May 1950 may be considered as modified.

Id/S.R.D.
dt/- 25/5/

Remembrancer of Legal Affairs.

U.R. to D.D. No. , 10113 , dated the 26th June 1951.

Legal Department.

There is no substance in the contention of Shri M.I.M. Dowjee that the by-laws of the Ismailia Bank permitting the carrying on of Hundi business are in valid and ultra vires. The suit if filed by him, would be defensible.

Id/-

Additional Secretary to Government.

U.R. to D.D. No. 10367 , dated the 29th June 1951.

V.v.k. 14/6/56/

SC.

Legal Department:

Bombay Co-operative Societies. Rules, 1927.

Rule 32 - Amendment of

There would be no legal objection to amedding rule 32 of the Bombay Co-operative Societies Rules providing for an interval of 1[illegible] days from the date of service of notice, but it would be advisable to make also clear the mode of serving the notice.

Id/-

Additional Secretary to Government.

I.R. to D.D. No. 11900 , dated the 28th July 1951 .

V.v.k. 14/6/56/

50.

Legal Department

Co-operative SocietiesAct, 1925. section 54.

The existing provision in section 54 of the Bombay Cooperative Societies Act, 1925 is in no way inconsistent with the provisions of the Arbitration Act, 1940 (see sections 9& 10 of that Act). The proposal of the Tribunal as pointed out by the Registrar in his letter at p. 5 *ante* may create a deadlock in many arbitration cases where common consent of the parites for the appointment of arbitrators is not forthcoming, and consequently the proposal would not be feasible.

Id/-

Additional Secretary to Government.

U.R. to D.D. No. 11971 , dated the 27th July 1951.

V.v.k. 16/6/5

5C.

Legal Department.

Bombay Cooperative Act,1925. (Societies) Sections 54 Rule 37 of the Bombay Cooperative Societies Rules.

The view taken by the Registrar, Cooperative Societies on the first point is correct. It would be legally feasible to amend rule 37 of the Bombay Cooper.Societies Rules as proposed by the Registrar Cooperative Societies in respect of the second point.

Id/-

Additional Secretary to Government.

U.R. to D.D. No. 12080 , dated the 28th July 1951.

V.vk. 14/6/56/

SC.

Office of the R.L.A.

The facts as stated by the Registrar, Co-operative Societies, in his letter No. 610/2, dated the 27th July 1951 are these :-

A dispute has arisen between the G.I.P. Railway Employees Co-operative Credit Bank and its employees represented by the G.I.P. Railway Employees Co-opertive Bank Staff Union regarding wage scales, scales of dearness allowance, gratuity, provident Fund, houbs of work etc. of the staff. In order to have the said dispute settled by conciliation, a copy of the demands made by the staff Union was sent to the Deputy Commissioner of Labour. It appears that the dispute could not be settled as the recomendations made by the Conciliator were not accepted by the Board of the Bank The parties were subsequently advised that it was open to them to approach the Assistant Registrar to whom the powers under section 54 of the Bombay Co-operative Societies Act, 1925, w ere delegated for refferring the dispute to the Registrar's nominee appointed under rule 33 of the Bombay Co-operative Societies Rules , 1927, for giving an award.

The questions for R.L.A.'s consideration are:-

(1) Whether a dispute between a Co-operative Society and its employees regarding wage-scales, dearness allowance, amenities to employees and other matters concerning personnel and est ablishment would fall within the meaning of the word "dispute" in section 54 of the Bombay Co-operative Societies Act, 1925 , and

(2) whether such a dispute should be referred to arbitration only by the officers or servants of the society , and not by the staff Union as representing officers or servants.

V.v.k. 14/6/56

Section 54 of the Bombay Co-operative Societies Act, 1925, provides -

"If any dispute touching the constitution of business of a Society arises between members or past members of the Society or persons claiming through a member or past member or between members or past members or persons so claiming and any officer, agent or servant of the Society past or present or between the Society or its Committee, and any officer, agent, member or servant of the Society past or present, it shall be referr d to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned." ⊗

⊗ In G.I.P. Rly Employees Co-op Bank LTD. V. Bhikaji Ranganjia (45 Bom. L.R.P. 676) Chagla J. held.

I do not think it would be right to give a restricted meaning to the words "touching the business of a society" used by the Legislature in section 54 of the Act. The word 'business' is a very wide term and certainly it is not synonymous with the objects of a society. The expression 'touching the business of a Society would mean affecting the business of a Society or relating to the business of a Society; and it cannot be said that when a company employs or dismisses a servant, it does not do something which relates to it business. It is true that it is not one of the objects of the Company to employ or dismiss servants, but it it something which it does in the ordinary course of its business. And whatever is done in the ordinary course of business certainly relates to or affects the business. The very fact that section 54 refers to disputes between a Society and its servants, indicates that the disputes of the nature raised by the respondent in this case should be decided by the Registrar of Co-operative Societies".

The objeor underlying sect on 54 is to set up a Special Court with a special jurisdiction and with special powers to try matters refered to in that section.

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5C.

Having regard to the language of section 54 and the decision in 45 B.L.R. 676 referred to above section 54 of the Act will have application to the dispute of present nature between the employees of the Society and the Society.

As regards the second question it may be mentioned that section 45 does not specifically provide as to who shall refer the dispute to the Registrar for decision. But it is obvious that these section contemplates the reference to the Registrar by any of the parties to the dispute. In the present case the dispute is between the Society and its employees, as represented by their Union. Therefore the dispute can be referred to the Registrar either by the Society or by the Union of employees.

Id/- J.R.D.
dt/- 8/8/

Reinbrancer of Legal affairs.

U.R. to D.D. No. 12783, dated the 9th August 1951.

V.v.k. 14/8/56/

SC.

I ment.

It appears that Shri Anjarlekar, who was serving the the Home Department, contracted certain debts from the Bombay Secretariat Co-operative Bank,Ltd. He executed an agreement authorising the Home Department to deduct on behalf of the Bank from his salary, gratuity orothersums payable to him towards the satisfaction of the aforesaid loan together with interest, etc. He has now retired from service but has still to pay Rs. 370 to the Bank.The questions raised for the R.L.A. 's consideration are :

(1) Whether under the authority executed by Shri Anjarlekar, the amount of loan can be deducted from the gratuity payable by the Accountant General towards payment of the loan;

(2) Whether it would be legal to direct the Accountant General to recover the amount from the grahuity payable to Shri Anjarlekar and pay the same to the Bank.

Section 24A(1) of the Bombay Cooperative societies Act, 1925, provides that a member of society may execute an agreement in favour of a society providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the Society. Sub-section (2) provides that on the execution of such agreement the employer shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amount so deducted to the society.The authorisation executed under section 24A warrants the deduction of the amount by the

employer. In the present case, though the authority is givin to the Home Department, that authority clearly extends to deduction from the salary or wages payable by any authority employed in the Home Department, is a servant of Government. Consequently, no distinction can be made between payment to be made by the Home Department and the payment to be made by the Accountant General as payment by both would be payment by the employer, viz. Government. However in the present case, the authority executed by Shhi Anjarlekar extends to deduction not only from salary but also from gratuity or other sums payable to him. Section 24A(1) however allows deductions only from salary or wages on the execution of such authority. Gratuity cannot be considered as salary or wages. Consequently, the authorisation executed by Shri Anjarlekar goes beyond the scope of section 24A(1) in so far as it extends to deduction from gratuity and other sums. The authorisation executed by Shri Anjarlekar is to that extent not in conformity with section 24A and inoperative. Government cannot, therefore, make a deduction from the gratuity payable to Shri Anjarlekar for being paid to the Bank towards the satisfaction of its loan. Further, Shri Anjarlekar has retired from Government service and consequently Government is no longer an employer within the meaning of sectin 24A(1). On this ground also it would not be competent for Government to make the deduction

Id/-

Additional Secretary to Government .

W.R. to H.D. No. 13388 , dated the 21st August , 1951.

v.k. 14/8/56/

5C.

LEGAL DEPARTMENT.

For the reasons stated by D.D. the order issued by Government in Government Notification, Development Department No. 9734/45, dated 27th October 1949 is clearly defective and is not lawful. However as the order has not been so far challenged, it may beleft, as it is. A new order as suggested by the Deputy Registrar is not feasible-Also it will create more complication. The term of the office of the 5 members appointed by Government under rule 48(1(B) however will be governed by the provisions of rule 48(2) notwithstanding the Government's direction in the order which is contrary to law that it shall be for 2 years .Only the Managing Committee may be informed accordingly.

Id/-

Additional Secretary to Government .

U.R. to D.D.No. 12482 , dated the 4th August 1951.

V.Rk. 14/6/56

SC.

Legal Department.

The points referred to the R.L.A. are:-

(1) Whether under the Indian Trusts Act the first mortage of the house could not be considered a trustee security; and

(2) Whether the profits of the Co-operative Housing Finance Society would be liable to income tax and whether the dividend declared by the Society would be added to the income of the recipient and again subjected to income tax.

2. As regards (1): Under clause (e) of the section 20 of the Indian Trusts Act, 1882, a first mortgage of immovable property situate in a part A or a Part C State is a trustee security, provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one third or, if consisting of buildings, exceeds by one-half the martagage money. It is clear from this provision that a first mortage of a house in a Part A or Part C State would be a trustee security- provided the value of the house exceeds by one half the mortgaged money that would be advanced by the society. thereof.

3. As regards(2) Section 33(1) of the Bombay Co-operative Societies Act, 1925, enacts that the Central Government, by notification in the Official Gazette, may in the case of any society or class of societies, remit the income tax or super tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the society. Under section 60 of the Indian Income-tax Act, 1922, a similar power of exemption is vested in Government and it appears that by a notification the Govt. of India has exempted "the profits of any co-operative society other than the Sanikatta Salt Owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1925 (II of 1912) the Bombay Co-operative Societies Act 1925 (Bombay Act VII of 1925), or the dividends or other payments received by

12

k. 13/6/58

...ociety out of such profits. Explain

tion to that notification runs as folows:-

> "For this purpose the profits of Co-operative ociety shall not be deemed to include any income, profits or gains for
>
> (1) investments in (a) securities of the nature referred to in section 8 of the Indian Income-tax Act, or (b) property of the nature referred to in section 9 of that Act,
>
> (2) dividends, or
>
> (3) the 'other sources' referred to in section 12 of the Indian Income-tax Act."

(see p. 1132 of Sundaram's law of Income-tax in India, 6th edition). Sundaram's book, howeve , does not indicate the number and the date of the Government of India's notification. It has, therefore, not been possible to verify its terms or whether the notification has since been modified. The D.D. may obtain a copy of the orders of the Government of India in regard to the exemption and ascertain the up-to-dated position in his respect. If the orders referred to in Sundaram's book still stand unmodified, it would appear that the Co-operative Housing Finance Society, which presumably will be registered under the Bombay Co-operative Societies Act, 1925 , will be entitled to the benefit of the exemption.

Id/-

Additional Secretary to Government

U.R. to D.D. No. 13432 -Confl. dated the 22nd August 1951.

V.V.k. 14/8/

50.

Legal Department.

It appears that during the liquidation proceedings of the Pandharpur Madhyandin Bramhavrinda Co-operative Bank Ltd., the liquidator ap pointed by the Registrar of Co-operative Societies passed an order under clause (h) of section 50 of the bombay Cooperative Societies Act, 1925, that the amounts of Rs. 11501/- and Rs. 5000/- -respect tively standing in the current account and saving account in the Bank to he Credit of one Shri Da tatraya Ragunath Shahpure and the amount of Rs. 5500/- s anding to the credit of Shrimati Shantpai Dattatraya Shahapure should be transferred to the "Accounts of Defalcated Amount" in the books of the Co-operative Bank- It ap aears further that Shri-.DR.R. Shahapure who was first a depositor and then a shareholder of the Bank and a member of the Board of Directors conspired with one M.D.Takabhate in obtaining bowgus credit towards his deposits whereby the Bank had been put to a lossof Rs. 78,200/- .The liquidator's District Court, Sholapur, who has been appointed as the guardian of the esta e of the minor's behalf by the Dy. Nazir, District Court, Shopur., who has been appointed as he guardian of the estate of the minor in which two irregularities amongst other s have be n pointed out, (1) that the liquidator passed the order in question without having obtained the sanction of the Registrar to exercise the powers as required by the opening words of section 50 of the Act, and (2) that the order was passed without giving the minor representative of the deceased member an opportunity to answer the clai s as required by the proviso to that section.The R.L.A. is requested to advise with reference to both t ese points.

2. The first question is whether the order passed by the liquidator of the Madhyandin Bramhavrinda Urban Co-operative Bank of 9th June 1951 forfeiting the deposits standing in the name of Shri DR.R.Shahapure and his wife

W.P. 14/3/56is had for his not having obtained the sanction of the

Registrar as required by section 50 of the Bombay Co-operative tive Societies Act, 1925. That section empowers liquidators to exercise the powers specified in clauses (a) to (i) with the sanction of the Registrar. The sanction under section 50 is given by the Registrar in a general manner in respect of certain specified powers which they may exercise in routine and ordinary matters or the Registrar may require the liquidator to seek his sanction for specified acts which are important, while exercising the powers in individual cases. A liquidator is an officer of the Registrar if he exercisees any of the powers mentioned in section 50 without the sanction of the Registrar he may be personally liable for any loss resulting therefrom (vide Gupta's Co-operative Societies Act, 3rd Edition pp. 536-37). Under sub-rule(3) of rule 88 of the Bombay Co-operative Societies Rules, 1927, the liquidator has to make separate orders against the various members and past members of the society, noting the amount to be realised from each as a contrabution under clause(d) of section 50. These orders are to be submitted for approval to the Registrar. It seems from these provisions that before a liquidator purports to make an order under section 50 of the Act he has to obtain the sanction of the registrar. As this was not done in the present case the liquidator's order fixing the liability of Shri D.R. Shahapure appears to be bad and the subsequent sanction of the Deputy Registrar may not cure the irregularity.

3. The next question arises on account of the proviso to section 50. That proviso enacts that no liquidator shall determine the contribution, debt or dues to be recovered from a member or a past memebr or the Representative of a deceased member unless opportunity has been given to such member or past member or to such

from

deceased member Shri D.R. Shahapure it was incumbent upo the liquidator to give a notice to the guardian of the minor in this case to put in his say. On this account too the liquidator's order appears to be bad. The fact that in criminal proceedings heard by the District Judge the deceased D.R.Shahapure was held guilty does not appear to change the pogition.

4. Moreover, in this case the liquidator appears to have gone beyond the powers specified insection 50. He has not merely fixed the liability of the deceased Shri D.R.Shahapure but has also directed that the deposits standing not only in his, name , but in that of his wife should be crediated towards the assets of the Bank in liquidation. On this account too the order of the liquidator appears to be defective.

Id/-

Additional Secretary to Government

U.R. to D.D. No. 1631 , dated 11th October 1951.

V.v.k. 15/6/56/

5C.

Legal Department

Change of nominee or withdrawal of reference.

Bombay Coperative Societies Act, 1925 Sections 54 And Bombay Cooperative Societies Rules Rule 32.

It appears that Shri C.J.Ambli made in application to the Registrar of Cooperative Societies, Bombay State, Poona requesting him to change his nominee who is acting as Chairman of the Board of Arbitrators appointed for deciding the election dispute of the Bijapur District Central Cooperative Bank Ltd. The Registrar has rejected his application on the ground that it was not competent for him to withdraw the reference once made, nor to change his nominee. The R.L.A. is requested to advise whether the decision of the Registrar of Cooperative Societies is correct, that is to say, whether a case once referred to arbitration could not be withdrawn and whether the Registrar has no power to order a change of his nominee.

2. Section 54 of the Bombay Cooperative Societies Act 1925, provides for a reference to arbitration of a dispute touching the business of a society between members etc. Such reference may be made to an arbitration of three arbitrators one of whom shall be the Registrar or his nominee and the other two shall be nominated by the parties concerned. There is no express provision in the Act empowering the Registrar either to withdraw the reference once made to the Board of Arbitrators or to change his nominee. Section 46 of the Arbitration Act, 1940 provides that the provisions of this Act, except subsection (1) of section 6 and sections 7, 12, and 37 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement, and as if that agreement, except in so far as this Act is inconsistent with that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder. A reference to arbitration under the Cooperative Societies Act would by reason of section 46 of the Arbitration Act.

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SC.

therefore be deemed to be an arbitration under the Arbitration Act and the provisions of that Act would apply except where the provisions of the Bombay Cooperative Societies Act and the Rules made thereunder provide to the contrary. As stated above the Bombay Cooperative Societies Act contains no provision empowering the Registrar to change his nominee. Section 11 of the Arbitration Act provides "(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with ther reference and making an award. (2) The Court may remove an arbitrator or umpire who has misconducted him self or the proceedings. (3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to recieve any remuneration in respect of his services. (4) For the purposes of this sect on the expression "proceeding with the reference" includes, in a case where a reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire". In the present case however it dies not appear from the allegations made by Mr. Ambil that the Registrar's nominee has misconducted himself or the proceedings. Nor has he failed to use all reasonable despatch in entering on and proceeding with the reference and making an award. Also this power of removing the Registrar's nominee under Section 11 of the Arbitration Act vests in the Court and not in the Registrar Consequently, the decision of the Registrar that he cannot change his nominee appears to be correct.

8. The next question for consideration is whether the Registrar can withdraw the reference from the arbitrators. The only provisi n which enables the Registrar to withdraw is rule 32 of the Bombay Cooperative Societies Rules 1927. That Rule inter alia provides that when a dispute has been referred to the Registrar 's nominee or to three arbitrators for decision and is not decided by them within two months or such further period as the Registrar may allow, the Registrar may decide the Dis-

pute himself or refer it again to his nominee for decision. This provision was considered by the Tribunal in appeal No. 7/1951 (Mulchand Gulabchand Agarwal Vs. the Bombay Provincial Cooperative Bank Ltd.) Conceding that this provision is reasonable and ought to be there, the Tribunal however held tt to be ultra vires on the ground that there is no provision in the Act empowering the Registrar to withdraw the reference from the Arbitrators after it has once been made. Section 28(1) of the Arbitration Act provides that the Court may, if it think fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the the time for making the award. Clause 3 of the First Schedule to the Arbitration Act provides that the arbitrators shall make their award within four months after entering on h the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. If the arbitrators do not make the award within the prescribed or extended time the reference will lapse. It is, therefor, clear that the aforesaid provision of Rule 32 appears to be quite sound and reasonable and should have been consiered intra vires of the Act in as much as it it merely ancillary to arbitration. But, unfortunately, the Tribunal has taken the view that it is ultra-vires in as much as there is no provision in the Act itself providing for power to make such a rule - In the circumstances, the only course left open would be to amend the Act prescribing limitation for making the award and until such provision is made the Registrar will have no power to withdraw the reference from arbitrators even though the arbitrators have failed to make the award within two months or such further extended time.

Id/-

Aditional Secretary to Government.

U.R. to D.D. No. 14452 , 11th September 1951.

/6/56/ SC.

Legal Department.

The question raised for the consideration of the R.L.A. is whether under the Bombay Cooperative Societies Act, 1925, it is feasible for a society registered under the Act to convert itself into a different type of society by the adoption of bylaws of the latter type of society, or whether in order to achieve this object it would be necessary to amend the Act.

2. section 10 of the Bombay Cooperative Societies Act, 1925, empowers the Registrar to register a society and its bylaws. It is true that section 16 empowers the general body of a society to amend the bylaws, and the amendments are also required to be registered. But this would not mean that the general body can entirely alter the whole set of bylaws. That section only provides for amendments of bylaws and not for the adoption of bylaws suitable for a different type of society. When a society is registered under the Act it becomes a corporate body distinct from the persons composing it and the persons doing buisnes with it can sue it in its name. It is not necessary for them to know the names and addresses of the partners. If a society is permitted to convert itself into a differenct type of society as suggested the obligati s of the society to others might be affected. Such obligations and liabilities will have to be saved. For this purpose it appears that specific provision in the Act itself would be necessary. Whenever the law allowed the society to change its name, to amalgamate with anoter society or to divide itself, care has been taken to specifically provide for the liabilities due by the original society. (Cf. Sections 14, 15(2) proviso, 15A (4) and (5). The power of the Registrar to alter the classification of any sociey under section 3(h) would not imply the

power of a society to convert itself from one class of society to another class of society. The views expressed by Shri.C.M. Gandhi at pp. 36-37- of his commentary appears to be correct. An amendment of the Bombay Cooperative Societies Act would be necessary to achieve the object.

Id/-
Additional Secretary to Government.

U.R. to D.D. No. 18078, dated the 14th November 1951.

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SC.

Legal Department.

It appears that Sardar Devar T.K.Kodi , the Chief Promoter of the Gujarat parsi Co-operative Insurance Society, has requested the Registrar to register the Society under the Bombay Co-operative Societies Act. The society not being open to all residents of the Surat District but being limited to Parsis only, the Registrar does not propose to register it. The R.L.A. is requested to advise whether the Registrar can refuse to register the society under the Bombay Co-operative Societies Act on the ground that non-Parsis are not admitted to the membership of the Society .

2. Section 10 of the Bombay Co-operative Societies Act, 1925 , provides that if the registrar is satisfied that a society has complied with the provisions of the Act and the Rules and that its proposed by-laws are not contrary to the Act or to the Rules, he may register the society and its by-laws. In the present case, the registration of the society has not been refused on any of the grounds referred to in section 10, but on the ground that the society is not open to non-Parsis of Surat District. The Act nowhere prohibits in specific terms the formation of communal societies, i.e. societies the membership of which is open only to members of a particular community. Section 7 which prescribes the conditions of registration only provides that in the case of societies whose object is the creation of funds to be lent to its members, unless the Registrar otherwise, directs all persons forming the society must be members of the same tribe, class or occupation. It appears that among other objects the creation of funds to be lent to its members is also an object of the society. If so, it will be open to have a

society of Parsis only of Surat District, provided such Parsis are members of the same tribe, class or occupation. Parsis in a sense can be considered to be members of the same tribe. The Registrar, therefore, cannot insist on the society being thrown open to non-Parsis. Also admission of non-Parsis who obviously will not be members of the same tribe as parsis would be contrary to the provisions of section 7(1)(b) . The above view proceeds on the basis that the society is one the object of which is the creation of funds to be lent to its members. However, if it is considered that that is not the object of the society, then , even the requirement of section 7(1) (b) is not necessary at all, and such society can be formed by any 10 persons above the age of 18.

Id/-

Additional Secretary to Government.

U.R. to D.D. No. 18440 , dated the 19th November 1951.

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5C.

Office of the R.L.A.

Rule 44 of the Bombay Co-operative Societies Rules 1927, prescribes the mode of serving summonses.A summons issued by inter-alia the Registrar's nominee may be served personally or through a Mamlatdar, Mahalkari, or any member of the Co-operative Department or any honorary Organizer or Chairman or Secretary of the Society or by registered post, acknowledgment paid. In the appeal in question a summons was sent by registered post but was returned unserved. No further steps seem to have been taken by the arbitrator. It seems that the power conferred by section 58 of the Bombay Co-operative Societies Act, was not exercised by him. That section provides that wherever in the Act it is provided inter alia that the Registrar or person nominated by him shall arbitrate, such person shall have the power to summon and enforce the attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the prodiction of documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908 .It will thus be seen that the arbitrator nominated by the Registar can, in view of section 58 exercise the power of summoning witness s and compelling them to give evidence as can be exercised by Civil Courts, under Order 5 in the 1st Schedule to the Civil Procedure Code. As stated by the Registrar no amendment of the Bombay Co-operative Societies Rules, 1927, , is necessary, as proposed by the Chairman of the Cov operative Tribunal.

Id/-

Brancer of Legal Affairs

U.R. to D.D. No. 19466 , dated the 4th December 1951.

l.v.k. 15/6/56/

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether joint stock companies and associations can be admitted as members of Co-oprative societies.

"Member" as defined in section 3(c) of the Bombay Co-operative Societies Act, 1925, includes a person joining in the application for the registration of a society or person admitted to membership after registration in accordance with the rules and by-laws applicable to such society. What persons can join in the application for registration and what persons can be admitted to membership after registration are stated in section 7(1) which is as follows:-

"No society, other than a society of which a member is a society, shall be registered under this Act, which does not consist of at least 10 persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless all persons forming the society-

(a) reside in the same town or village or in the same group of villages, or

(b) save where the Registrar otherwise directs, are members of the same tribe, class or occupation and no person shall be admitted to the membership of any such society after its registration unless such person fulfils the requirements of clause (a) or (b), as the case may be."

Section 9(1) does provided that for purposed of registration an application to the Registrar shall be made. Sub-section (2) provides :

" The application shall be signed -

(a) in the case of society of which no member is a society by at least ten persons qualified in accordance with the requirements of section 7(1) and.

(b) in the case of a society of which a member is a society, by a duly authorised persons on behalf of every such society and where all the members of the society are not societies, by ten other members or, when there are less than ten other members, by all of them. "

It is therefore clear that apart from individuals only a a society as difined in section 3(c) that is to say, a

society registered or deemed to be regisered under this Act, can become a member. No doubt section 3(3g) of the Bombay General Clauses Act provides that unless there is enything repugnant in the subject or context,"person" shall include any company or association or body of individuals / whether incorporated or not. A joint stock company would by a company within the meaning of that definition of the term "person" , but to give the term "person " in section 3(e) of the Bombay Co-operative Societies Act that wide meaning would be repugnant to the provisi ns of section7(1), inasmuch as the age of the person applying for registration is considered as a criterion for qualifying him to make such application, which evidently means that the person is used in that expression in the sense of an individual. Consequently, a joint stock company or an association ehher than a society as difined in section 3(e) of the Bombay Co-operative Societied Act cannot be member of a society registered under the Act.

Id/-
id/- 19/10 /

Remembrancer of Legal Affairs.

U.R. to D.D. No. 16692 , dated the 20th October 1951.

V.v.k. 15/6/56

SC.

copy.U.
Id
26.10.

R.L.A.

Discussed with H.M. F.D.

Sect. 67 of the Bom. Cooperative Societies Act is of no use in this connection. If joint stock companies are to be permitted to be the members of cooperative societies, a specific amendment of the Bom. Cooperative Societies Act, 1925 will be necessary.

Id/- J.R.D.
dt/- 29-10-51.

U.R. to D.D. No. 17259, dated the 1- November 1951.

(Pl. see opinions No. 16698 of 20/x/1951 also.).

V.v.k. 15/6/56/
SC.

Office of the R.T.A.

Removal of Managing Committee

Bombay Co operative Societies Rules, 1927.

Rule 48.

The question referred to R.T.A. is whether the new managing Committee of the Sanoli Cooperative Collective Farming Society Ltd. can be removed by Government under Rule 48 of the Bombay Co-operative Societies Rules, 1927.

It appears that the Society was registered on 12th August 1950 and on account of mismanagement of its affairs the Registrar of Co-operative Societies, Bombay State, Poona, submitted a proposal to Government on 24th September 1951 to remove all the member of the managing committee under Rule 48 of the Bombay Co-operative Societies Rules, 1927. While this proposal of the Registrar was pending with Government it is reported to Government that the Society has elected a new managing committee at the Annual General meeting of the Society held on 5th September 1951 and that in this committee four old members and three new members have been elected. The Registrar insists that even this new committee should be superseded on the grounds given be him in this letters dated the 24th September 19 51 and 8th December 1951 and the question for consideration is whether it is legally feasible to do so.

The scope of Rule 48 of the Bombay Co-operative Societies Rules has been recently considered by the Bombay High Court in S.S. Kurdeshwar vs. The State of Bombay (Misc. No. 253 of 1950). It is held there that before action can be taken under that Rule, Government has to give an opportunity to the committee or the members concerned to show cause why such order should not be made . This means that Government will have to consider judicially the objections that may be urged by the committee or members who may show cause against the proposed orde and if this is not done the party aggrieved can approach the ecurt for quashing the proceedings.

V.v.k. 15/6/

In the present case, the reasons which were supplied by the Registrar in thee showw cause notice accompanying his letter No. F-5/2 , dated the 24th September 1951 were with respect to the managment by the old committee which has now ceased to function and a new committee has come into the picture. It is true that 4 old members have been included in the new managing committee, but that would be no reason for removing thewhole managing committee from office. It would be desirable to give an opportunity to the new committee to remedy the matters and if thenew committee fails to rectify the matters and continues to mismanage the affairs, steps may be taken to remove the same after following the procedure laid down in Rule 48 of the Bombay Co-operative Societies Rules, 1927

Id/- J.R.D.
dt/- 27/12/

Remembrancer of Legal Affairs.

U.R. to D.D. , No. 107-Confl. , dated the 27th December 1951.

with confl.file cah 16/12380

v.k. 15/6/56/

5C.